SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 121

SAM WALDER, PETITIONER

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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a [Caption omitted.]

1 United States Commissioner, Western District of Missouri

RECORD OF PROCEEDINGS IN CRIMINAL CASES

Before Charles H. Thompson, Kansas City, Mo.

Commissioner's Docker No. 20, Case No. 6897

THE UNITED STATES
vs.
SAM WALDER

Complaint filed on January 7, 1952, by George F. Shattuck. Official title U. S. Nar. Agt.; charging violation of United States Code, Title 26, Section 2554 (a), on May 8, 1951, at Kansas City, Mo., in division of the Western District of Missouri as follows: Sold a quantity of heroin illegally

Warrants or summons issued: Date January 7, 1952. Warrant for said defendant to any U. S. marshal or his deputies. Substance of return: Warrant duly executed by arrest of said defendant January 7, 1952, at Kansas City, Mo., by Joseph W. Murphy, a deputy U. S. marshal.

Proceedings on first presentation of accused to commissioner: Date January 7, 1952. Arrested by said deputy marshal on warrant of said Commissioner. Appearances for United States, no one; for accused, no one.

Proceedings taken: Said defendant was brought before me by said deputy marshal and fully advised of the charge against him and of all his rights, including the right to a hearing and waive the same and to the advice of his attorney. John P. Clifford, John F. Flavin, and Richard Bennett were duly sworn as witnesses whereupon defendant waived hearing.

Outcome: Defendant held for appearance said District Court.

Bail fixed January 7, 1952; amount, $5,000. Committed to Jackson County, Mo., jail on January 7, 1952.

Subpoenas for witnesses issued: January 7, 1952, for John P. Clifford, John F. Flavin, and Richard Bennett, at request of U. S. Government. Duly served by said deputy marshal.

Witness payroll containing 3 names certified to United States marshal for payment January 7, 1952.

Made this 10th day of January 1952.

Transmitted to clerk of United States District Court for the Western District of Missouri, at Kansas City, January 10, 1952.

CHARLES H. THOMPSON,
United States Commissioner.

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2 COMPLAINT

United States District Court for the Western District of Missouri

Case No. 6897

UNITED STATES OF AMERICA

v.

SAM WALDER

Complaint for Violation of U. S. C., Title 26, Section 2554 (a)

Before Charles H. Thompson, Kansas City, Mo.

The undersigned complainant being duly sworn states: That on or about May 8, 1951, at Kansas City, Mo., Western District of Missouri, Sam Walder did sell ten (10) grains more or less of Heroin Hcl. on May 8, 1951, in Kansas City, Mo. This sale was not pursuant to written order forms as required by law.

And the complainant further states that he believes that John P. Clifford, John F. Flavin, and Richard Bennett, detectives of the Kansas City (Mo.) Police Department are material witnesses in relation to this charge.

George F. Shattuck,
GEORGE F. SHATTUCK,
Narcotic Agent.

Sworn to before me, and subscribed in my presence, January 7, 1952.

[SEAL] CHARLES H. THOMPSON,
United States Commissioner.

3 COMMISSIONER'S WARRANT OF ARREST

District Court of the United States, Western District of Missouri

Case No. 6897

UNITED STATES OF AMERICA

v.

SAM WALDER

Warrant of Arrest—Criminal; Marshal's No. 41816. Received January 7, 1952, Kansas City, Mo.

To United States Marshal or his Deputies:

You are hereby commanded to arrest Sam Walder, and bring him forthwith before the nearest available United States Commissioner to answer to a complaint charging him with having sold

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ten (10) grains more or less of Heroin Hcl. on May 8, 1951, in Kansas City, Mo., this sale was not made pursuant to written order form as required by law in violation of U. S. C., Title 26, Section 2554 (a).

Date: January 7, 1952.

Charles H. Thompson,
CHARLES H. THOMPSON,
United States Commissioner.

Return: Received Jan. 7 Th; 1952, at K. C. Mo., and executed by arrest of defendant, at 9th Grand., K. C., Mo., Jan. 7 Th. 1952.

FRED A. CANFIL,
U. S. Marshal,
Western District of Missouri.
Jos. W. Murphy,
By J. W. MURPHY,
Deputy.

Jan. 7 Th. 1952.

4 COMMISSIONER'S SUBPOENA

District Court of the United States, Western District of Missouri

Case No. 6897

UNITED STATES OF AMERICA
v.
SAM WALDER

Subpoena—Criminal; Marshal's No. 41816. Received January 7, 1952, Kansas City, Mo.

To John P. Clifford, John F. Flavin, Joseph Marchio, and Richard Bennett:

You are hereby commanded to appear before the undersigned United States Commissioner in U. S. Courthouse at Kansas City, Mo., on the 7th day of January 1952, at 11 o'clock a.m. to testify in the above entitled proceeding.

This supoena is issued on application of U. S. Court.

Date: January 7th, 1952.

CHARLES H. THOMPSON,
United States Commissioner.

Return:[1] This subpoena was received by me on Jan. 7 Th; 1952, and was served in the following manner: Upon John P.

[1] As to who may serve a subpoena and the manner of its service see Rule 17d of the Federal Rules of Criminal Procedure.

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Clifford, John F. Flavin, and Richard Bennett. Jaosep Marchio, 9 Th Grand, K. C. Mo. All done in Jackson County.

Jos. W. Murphy,
J. W. Murphy,
Deputy.

United States District Court for the Western District of Missouri

Case No. 6897

United States of America

v.

Sam Walder

Criminal: Marshal's No. 41816. Received January 7, 1952, Kansas City, Mo.

Final commitment of defendant

To the United States Marshal of the Western District of Missouri:

You are hereby commanded to take the custody of the above-named defendant and to commit him with a certified copy of this commitment to the custodian of a place of confinement within the Western District of Missouri approved by the Attorney General of the United States where the defendant shall be received and safely kept until discharged in due course of law. The above-named defendant was arrested upon the complaint of George W. Shattuck, U. S. narcotic agent, charging that on or about May 8, 1952, in the Western District of Missouri, the defendant did sell a quantity of heroin illegally, in violation of U. S. C., Title 26, Section 2554 (a), and he waived hearing before me on January 7, 1952, where it appeared that there is probable cause to believe that the offense so charged has been committed and that he has committed it,[1] has been directed to furnish bond in the sum of $5,000 for his appearance in the United States District Court for the Western District of Missouri at Kansas City, Mo., in accordance with all orders and directions of the court relative to his appearance before the court, and he has failed to do so.

Charles H. Thompson,
United States Commissioner.

Dated: January 7, 1952.

[1] If preliminary examination was waived strike the word "after * * * [thru] * * * committed it" and substitute the following, "having duly waived preliminary examination before me."

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Return: Received this commitment and designated prisoner on January 7, 1952, and on January 7, 1952, committed him to Jackson County Jail, Kansas City, Mo., and left with the custodian at the same time a certified copy of this commitment.

Dated January 7, 1952.

FRED A. CANFIL,
United States Marshal,
Western District of Missouri.
By J. W. Murphy,
J. W. MURPHY,
Deputy.

6 In the United States District Court for the Western District of Missouri, Western Division

No. 18225. Sect. 2554 (a) T. 26, U. S. C. A.

UNITED STATES OF AMERICA, PLAINTIFF

v.

SAM WALDER, DEFENDANT

Indictment filed January 18, 1952

The Grand Jury Charges:

That on or about the 10th day of January 1951, at Kansas City, Missouri, in the Western District of Missouri, Sam Walder did sell and transfer five (5) grains of heroin, a derivative of opium not in pursuance of a written order of the person to whom it was sold and not on a form issued in blank by the Collector of Internal Revenue.

Count II

The Grand Jury Further Charges:

That on or about the 11th day of April, 1951, at Kansas City, Missouri, in the Western District of Missouri, Sam Walder did sell and transfer ten (10) capsules containing twelve (12) grains of heroin, a derivative of opium, not in pursuance of a written order of the person to whom it was sold and not on a form issued in blank by the Collector of Internal Revenue.

Count III

The Grand Jury Further Charges:

That on or about the 12th day of April, 1951, at Kansas City, Missouri, in the Western District of Missouri, Sam Walder did sell and transfer ten (10) capsules containing eleven and one-half (11½) grains of heroin, a derivative of opium, not

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7 in pursuance of a written order of the person to whom it was sold and not on a form issued in blank by the Collector of Internal Revenue.

Count IV

The Grand Jury Further Charges:

That on or about the 18th day of May 1951, at Kansas City, Missouri, in the Western District of Missouri, Sam Walder did sell and transfer eight (8) capsules containing ten (10) grains of heroin, a derivative of opium, not in pursuance of a written order of the person to whom it was sold and not on a form issued in blank by the Collector of Internal Revenue.

A true bill:

EDYTHE L. SHELBY,
Foreman.

WILLIAM AULL III,
Assistant United States Attorney.

8 [File endorsement omitted.]

10 WARRANT FOR ARREST OF DEFENDANT

United States District Court for the Western District of Missouri

No. 18225

UNITED STATES OF AMERICA *v.* SAM WALDER

Criminal: Marshal's No. 41816. Rec'd. 1-18-52, K. C. Mo.

To[1] *Any United States Marshal:*

You are hereby commanded to arrest Sam Walder and bring him forthwith before the United States District Court for the Western District of Missouri in the city of Kansas City to answer to an indictment charging him with unlawful sale of heroin in violation of Section 2554 (a), T. 26, USCA.

(Appearance bond fixed by order of Court at $10,000.00 to be taken by the nearest United States Commissioner.)

[SEAL] A. L. ARNOLD,
Clerk.

By W. W. CASTER,
Deputy Clerk.

Date: January 18, 1952.

Return: Western District of Missouri, *ss.* Received the within warrant the 18th day of January 1952, and executed same on the

[1] Insert designation of officer to whom the warrant is issued, e. g., "any United States Marshal or any other authorized officer"; or "United States Marshal for _____ District of _____"; or "any United States Marshal"; or "any Special Agent of the Federal Bureau of Investigation"; or "any United States Marshal or any Special Agent of the Federal Bureau of Investigation"; or "any agent of the Alcohol Tax Unit."

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21st day of January 1952 by arresting the within-named Sam Walder at Federal Building and having him before the U. S. District Court. Further by committing him to the Jackson County Jail with a copy of this writ.

FRED A. CANFIL,
U. S. Marshal.
By EUGENE T. DURRETT,
Deputy.

11 In the United States District Court for the Western District of Missouri, Western Division

No. 18225

UNITED STATES OF AMERICA, PLAINTIFF
v.
SAM WALDERS, DEFENDANT

Petition for Writ of Habeas Corpus ad Testificandum

The petition of William Aull III, Assistant United States Attorney for the Western District of Missouri, respectfully shows to this Honorable Court that Everett Jenkins is confined in the Missouri State Penitentiary at Jefferson City, Missouri, and is in the custody of the Warden of said penitentiary at said place, under authority of the State of Missouri and in accordance with the laws thereof, having been convicted of offenses against the laws of the State of Missouri, and sentenced to imprisonment in said Missouri State Penitentiary by virtue of which the said Warden now holds the said Everett Jenkins.

Your petitioner avers that the said Everett Jenkins is a material witness in the above-captioned cause on the 28th day of January 1952, and each day thereafter that his testimony may be required in said cause in the United States District Court in Kansas City, Missouri.

Wherefore, your petitioner prays that this Honorable Court do forthwith order the writ of habeas corpus ad testificandum to issue from this court to the said Warden of the Missouri State Penitentiary at Jefferson City, Missouri, as aforesaid, requiring
12 him to produce the body of Everett Jenkins to the United States Marshal so that he may produce the said Everett Jenkins before this grand jury on the 28th day of January 1952, and each day thereafter that his testimony may be required in said cause by the United States District Court at Kansas City, Missouri, to testify on behalf of the plaintiff and as in duty bound your petitioner will ever pray.

WILLIAM AULL III,
Assistant United States Attorney.

13 [File endorsement omitted.]

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14 In the United States District Court for the Western District of Missouri, Western Division

No. 18225

UNITED STATES OF AMERICA, PLAINTIFF

v.

SAM WALDERS, DEFENDANT

Order

Upon application of William Aull III, Assistant United States Attorney for the Western District of Missouri, the Clerk is hereby ordered to issue writ of habeas corpus ad testificandum directed to the Warden of the Missouri State Penitentiary at Jefferson City, Missouri, to produce the body of Everett Jenkins to the United States Marshal so that he may produce the said Everett Jenkins now confined in the said Missouri State Penitentiary and under the custody of the Warden as aforesaid, before the United States District Court on the 28th day of January 1952, and each day thereafter that his testimony may be required by the United States District Court in said cause, in Kansas City, Missouri, to testify on behalf of the plaintiff in the aforesaid cause.

Dated at Kansas City, Missouri, this the 21st day of January 1952.

R. M. DUNCAN,
Judge.

15 [File endorsement omitted.]

16 In the United States District Court for the Western District of Missouri, Western Division

No. 18225

UNITED STATES OF AMERICA, PLAINTIFF

v.

SAM WALDERS, DEFENDANT

Writ of habeas corpus ad testificandum

To the Warden of the Missouri State Penitentiary at Jefferson City, Mo., and to the United States Marshal for the Western District of Missouri, Greeting:

We command you that you produce the body of Everett Jenkins, detained in the Missouri State Penitentiary at Jefferson City, Missouri, under your custody as it is said, to the United States

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Marshal so that he may produce the said Everett Jenkins, under safe and secure conduct before the United States District Court for the Western District of Missouri, on the 28th day of January 1952, at the Federal Building at Kansas City, Missouri, by 10:00 a. m. in the forenoon of the same day and each day thereafter that his testimony may be required by the United States District Court in said cause, there to testify the truth according to his knowledge, in a certain cause now pending in said court, and then and there to be tried, between the United States of America, as plaintiff, and Sam Walders, as defendant, on the part of the United States of America, and immediately after the said Everett Jenkins shall have given his testimony before the United States District Court, that you return him, the said Everett Jenkins, to the Missouri State Penitentiary at Jefferson City, Missouri, under safe and secure conduct, and have you then and there this writ.

Witness, the Honorable R. M. Duncan, Judge of the United States District Court for the Western District of Missouri, this 21st day of January 1952.

[SEAL]

A. L. ARNOLD,
Clerk.
By W. W. Caster,
Deputy.

17 Criminal: Marshal's No. 41816. Received January 22, 1952, K. C. Mo.

I hereby certify and return that I received the within writ at Kansas City, Missouri, on January 22, 1952, and executed the same on January 22, 1952, by mailing a true copy thereof to J. T. Lamar, Record Clerk, Missouri State Penitentiary, Jefferson City, Missouri, in accordance with a telephone conversation with Mr. J. T. Lamar.

FRED A. CANFIL,
United States Marshal.

Marshal's fee 1 service $2.00.
Filed January 28, 1952.

A. L. ARNOLD,
Clerk.
By W. W. CASTER,
Deputy.

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18 In the United States District Court, for the Western District of Missouri, Western Division

No. 18225, Sec. 2554(a), T. 26, USCA

UNITED STATES OF AMERICA, PLAINTIFF

v.

SAM WALDER, DEFENDANT

MOTION FOR BILL OF PARTICULARS

Count I

1. Comes now Sam Walder, having been named as a defendant in the indictment returned in the above entitled cause, and respectfully shows to the Court that it is not possible for this defendant to respond to the said indictment with reasonable certainty unless he is more fully informed as to the allegations therein, and respectfully requests the Court for an order directing the plaintiff to furnish this defendant a bill of particulars in the above entitled cause and, for that purpose, shows to the Court the following:

2. Under the allegations of Count I of said indictment, it is alleged "That on or about the 10th day of January 1951, at Kansas City, Missouri, in the Western District of Missouri, Sam Walder did sell and transfer five (5) grains of heroin, a derivative of opium * * *."

3. That under the said indictment, it is not alleged to whom the sale therein was made.

19 That plaintiff, therefore, be required to state the name of the person to whom said alleged sale was made.

Count II

1. Defendant herewith adopts all of the allegations and statements of Paragraph 1 of Count I of his motion for bill of particulars and incorporates same herein as if fully set forth.

2. Under the allegations of Count II of said indictment, it is alleged "That on or about the 11th day of April 1951, at Kansas City, Missouri, in the Western District of Missouri, Sam Walder did sell and transfer ten (10) capsules containing twelve (12) grains of heroin, a derivative of opium * * *."

3. That under the said indictment, it is not alleged to whom the sale alleged therein was made.

That plaintiff, therefore, be required to state the name of the person to whom said alleged sale was made.

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Count III

1. Defendant herewith adopts all of the allegations and statements of Paragraph 1 of Count I of his motion for bill of particulars and incorporates same herein as if fully set forth.

2. Under the allegations of Count III of said indictment, it is alleged "That on or about the 12th day of April 1951, at Kansas City, Missouri, in the Western District of Missouri, Sam Walder did sell and transfer ten (10) capsules containing eleven and one-half (11½) grains of heroin, a derivative of opium * * *."

3. That under the said indictment, it is not alleged to whom the sale alleged therein was made.

20 That plaintiff, therefore, be required to state the name of the person to whom said alleged sale was made.

ROPE & ROPE,
By HERBERT M. ROPE,
Attorneys for Defendant, 711 Waltower Building,
Kansas City 6, Missouri, Victor 3377.

Service of above motion for bill of particulars acknowledged this January 22, 1952.

SAM M. WEAR,
United States Attorney.
By WILLIAM AULL III,
Assistant.

21 In the United States District Court for the Western District of Missouri, Western Division

No. 18225

UNITED STATES OF AMERICA, PLAINTIFF
v.
SAM WALDER, DEFENDANT

BILL OF PARTICULARS

In response to "Motion for Bill of Particulars" filed by defendant, through his attorney, on January 22, 1952, the name of the party to whom the drugs mentioned in Count I were sold was Everett Jenkins; the name of the party to whom the drugs mentioned in Count II were sold was Henley Taylor; the name of the party to whom the drugs mentioned in Count III were sold was Henley Taylor.

SAM M. WEAR,
United States Attorney.
By William Aull III,
WILLIAM AULL III,
Assistant United States Attorney.

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I certify that a copy of the foregoing Bill of Particulars was mailed this date, January 25, 1952, to the Attorney for Defendant, Mr. Herbert M. Rope, 711 Waltower Building, Kansas City, Missouri.

William Aull III,
WILLIAM AULL III,
Assistant United States Attorney.

22 [File endorsement omitted.]

23 UNITED STATES OF AMERICA *v.* SAM WALDER

PETIT JURORS RETURNING FOR SERVICE TUESDAY, JANUARY 29, 1952

Carl Lyon, Freeman, Cass, farmer.
Robert L. Hawkins, Monegaw Springs, St. Clair, farmer-carpenter.
Roxie B. Thompson, Kearney, Clay, farm manager-nurse.
Julius H. Levin, 3222 Wabash, Kansas City, Jackson, postal employee.
Robert Parker, Buckner, Jackson, machinist, Sinclair.
William M. Acker, Windsor, Henry, manager, Farmers Co-operative.
Don R. Hall, Orrick, Ray, merchant.
Rayburn W. Dawes, Knobnoster, Johnson, water company.
Cecil N. Villines, 3316 Harrison, Kansas City, Jackson, roofing inspector, Certain-Teed.
Ida J. Loennecke, 1514 Hardesty, Kansas City, Jackson, housewife.
George E. Keltner, Martin City, Box 112, Jackson, livestock dealer.
Mary E. Jones, 16 West 80th Street, Kansas City, Jackson, housewife.

24 In the United States District Court, for the Western District of Missouri, Western Division

No. 18,225, Sec. 2554 (a), T. 26, USCA

UNITED STATES OF AMERICA, PLAINTIFF
v.
SAM WALDER, DEFENDANT

MOTION FOR JUDGMENT OF ACQUITTAL

Comes now the defendant herein, Sam Walder, and, at the close of the evidence submitted by the United States of America, and pursuant to Rule 29 of the Federal Rules of Criminal Procedure, moves the Court for judgment of acquittal for the reason

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that there is no evidence upon which a reasonable mind could find the guilt of the defendant under the charges made in Count I, Count II, Count III, and Count IV of the indictment herein, beyond a reasonable doubt, and that the evidence is insufficient to sustain a conviction upon any of said counts of the indictment.

ROPE & ROPE,
By HERBERT M. ROPE,
Attorneys for Defendant.

Overruled.

25 In the United States District Court

[Title omitted.]

VERDICT—FILED JANUARY 30, 1952

Count I

We, the jury in the above entitled cause, find the defendant, Sam Walder, guilty as charged in Count I of the indictment.

Count II

We, the jury in the above entitled cause, find the defendant, Sam Walder, guilty as charged in Count II of the indictment.

Count III

We, the jury in the above entitled cause, find the defendant, Sam Walder, guilty as charged in Count III of the indictment.

Count IV

We, the jury in the above entitled cause, find the defendant, Sam Walder, guilty as charged in Count IV of the indictment.

DON B. HALL,
Foreman.

[File endorsement omitted.]

26 JUDGMENT AND COMMITMENT

In United States District Court

[Title omitted.]

JUDGMENT AND COMMITMENT FILED JANUARY 30, 1952

On this 30th day of January 1952 came the attorney for the government and the defendant appeared in person and [1] by coun-

[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

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sel, Herbert Rope. It appearing to the court that on January 21, 1952 defendant appeared in open court in person and by counsel and upon arraignment entered a plea of not guilty to the indictment of four counts and that a trial of the cause was held on January 29, 1952 and this day, wherein a jury returned a verdict of guilty against the defendant on each of the four counts of the indictment,

It is adjudged that the defendant has been convicted upon his plea of [2] not guilty, and a verdict of guilty of the offense of selling and transferring certain quantities of heroin, a derivative of opium, not in pursuance of a written order of the person to whom it was sold and not on a form issued in blank by the Collector of Internal Revenue as charged [3] in the four counts of the indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of [4] five (5) years on Count I of the indictment herein; five (5) years on Count II of the indictment herein to run consecutive to and to begin at the expiration of the sentence of imprisonment imposed on Count I; five (5) years on Count III of the indictment herein to run consecutive to and to begin at the expiration of the sentences of imprisonment imposed on Counts I and II making a total sentence of fifteen (15) years; and five (5) years on Count IV of the indictment herein to run concurrently with the sentences of imprisonment imposed on Counts I, II, and III thereby making an aggregate total sentence of imprisonment of fifteen (15) years. All without costs.

It is ordered [5] that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

R. M. Duncan,
R. M. Duncan,
United States District Judge.

---

[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.
[3] Insert "in court(s) number _____" if required.
[4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to be run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.
[5] Enter any order with respect to suspension and probation.

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Approved as to form:

William Aull III
WILLIAM AULL III,
Assistant United States Attorney.

The Court recommends commitment to:[6] (None recommended.)

A. L. ARNOLD,
Clerk.
By GENE R. MARTIN,
Deputy.

28 JUDGMENT AND COMMITMENT

United States District Court, for the Western Division, Western District of Missouri

No. 18225

UNITED STATES OF AMERICA *v.* SAM WALDER

(Vio: Sec. 2554 (a), T. 26 U. S. C.)

On this 30th day of January 1952 came the attorney for the government and the defendant appeared in person and by counsel, Herbert Rope. It appearing to the court that on January 21, 1952, defendant appeared in open court in person and by counsel and upon arraignment entered a plea of not guilty to the indictment of four counts and that a trial of the cause was held on January 29, 1952, and this day, wherein a jury returned a verdict of guilty against the defendant on each of the four counts of the indictment.

It is adjudged that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offense of selling and transferring certain quantities of heroin, a derivative of opium, not in pursuance of a written order of the person to whom it was sold and not on a form issued in blank by the Collector of Internal Revenue as charged in the four counts of the indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years on Count I of the indictment herein; five (5) years on Count II of the indictment

[6] For use of Court wishing to recommend a particular institution.

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herein to run consecutive to and to begin at the expiration of the sentence of imprisonment imposed on Counts I; five (5) years on Count III of the indictment herein to run consecutive to and to begin at the expiration of the sentences of imprisonment imposed on Counts I and II making a total sentence of fifteen (15) years; and five (5) years on Count IV of the indictment herein to run concurrently with the sentences of imprisonment imposed on Counts I, II and III thereby making an aggregate total sentence of imprisonment of fifteen (15) years. All without costs.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Approved as to form:

R. M. DUNCAN,
United States District Judge.
WILLIAM AULL, III,
Assistant United States Attorney.

The Court recommends commitment to: (None recommended.)

A. L. MARTIN, *Clerk.*
By GENE R. MARTIN,
Deputy Clerk.

A true copy. Certified this 30th day of January 1952.

(Signed) A. L. ARNOLD, *Clerk.*
By GENE R. MARTIN,
Deputy Clerk.

29 In the United States District Court, for the Western District of Missouri, Western Division

No. 18225

UNITED STATES OF AMERICA, PLAINTIFF

v.

SAM WALDER, DEFENDANT

Sec. 2554 (a), T. 26, USCA

APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE MOTION FOR NEW TRIAL

Comes now Sam Welder, the defendant in the above entitled cause, by and through his attorney, Herbert M. Rope, and respectfully prays the Court for an extension of time of seven additional days in which to file his motion for new trial in the above cause wherein verdict and judgment were rendered against this defendant on January 30, 1952, for the reason that the attorney for this

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defendant has previously been assigned to the trial of causes in the United States District Court for the Western District of Missouri, Western Division, and the Circuit Court of Jackson County, Missouri, at Kansas City, and will be unable to properly prepare and file such motion within the time allowed therefor.

Wherefore, defendant respectfully prays the Court that the time for filing such motion be enlarged as aforesaid.

HERBERT M. ROPE,
Attorney for Defendant, 711 Waltower Building, Kansas City, Missouri, Victor 3377.

30 In the United State District Court, for the Western District of Missouri, Western Division

No. 18225

UNITED STATES OF AMERICA, PLAINTIFF
v.
SAM WALDER, DEFENDANT

Sec. 2554 (a), T. 26, USCA

ORDER

Now, on this day comes the above named defendant, by and through his attorney, and makes application for enlargement of time within which to file a motion for new trial, and the Court, being fully advised in the premises,

It is, therefore, ordered that the time for filing of said motion for new trial is, by the Court, enlarged to the 11th day of February 1952.

Dated at Kansas City, Missouri, this February 5, 1952.

R. M. DUNCAN,
Judge.

31 In the United States District Court for the Western District of Missouri, Western Division

No. 18225

UNITED STATES OF AMERICA, PLAINTIFF
v.
SAM WALDER, DEFENDANT

DEFENDANT'S MOTION FOR A NEW TRIAL

Comes now the defendant herein, Sam Walder, and moves the Court to grant him a new trial for the following reasons:

1. The Court erred in admitting, over objection of defendant, testimony of Government witnesses concerning a prior arrest of defendant on which occasion narcotics were alleged to have

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been found in defendant's possession, when such evidence was suppressed as having been the result of an unconstitutional search and seizure.

2. The Court erred in admitting, over objection of defendant, testimony in rebuttal, of defendant's previous arrest and possession of narcotics for the reason that such testimony was purely collateral to the issues and prejudicial to defendant's rights.

3. The Court erred in refusing to discharge the jury, after timely motion therefor, following highly prejudicial questioning by Government attorney, on cross-examination of de-
32 fendant, in substance, as to whether defendant had been previously arrested.

4. The Court erred in admitting persistent questioning of defendant, over objection, by counsel for Government on the subject of an alleged prior conviction of defendant for a felony, where defendant testified he did not remember.

5. The Court erred in its unwarranted and excessive reprimand, without reason or cause, of defendant's counsel during the cross examination of a Government witness.

6. The Court erred in failing to instruct the jury on the use of an alias by the defendant, after counsel for the Government was permitted to cross examine on the point, over objection of defendant.

HERBERT M. ROPE,
Attorney for Defendant, 711 Waltower Building, Kansas City, Missouri, Victor 3377.

Service of within motion for new trial acknowledged this 11th day of February 1952.

SAM WEAR,
United States Attorney.
By HUGH A. MINER,
Assistant United States Attorney.

33 In the United States District Court for the Western District of Missouri, Western Division

No. 18225

UNITED STATES OF AMERICA, PLAINTIFF
v.
SAM WALDER, DEFENDANT

SUGGESTIONS IN SUPPORT OF DEFENDANT'S MOTION FOR NEW TRIAL

1. In its cross-examination of defendant, the Government was permitted, over objection of defendant, to inquire concerning a prior arrest of defendant, on which occasion narcotics were found in defendant's possession. Subsequently, over defendant's objec-

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tion, the Government was permitted to further develop this issue by the use of everal witnesses who testified to the fact of the arrest and the finding of narcotics on defendant's premises. The narcotics found in the course of a search following the prior arrest were subsequently suppressed as evidence, preceding trial, said evidence having been found and seized by means of an unconstitutional search.

It is not argued that defendant himself opened up the question of prior dealings with narcotics by his direct testimony, nor is it disputed that he thereafter was subject to cross examination and impeachment. It is not argued that there may not have been certain prior acts of dealing with narcotics concerning which he may legitimately have been examined.

34 It is further not disputed that such evidence was introduced purely for the purpose of impeachment on the issue of prior dealings with narcotics, and, insofar as questioning thereupon of defendant, the evidence may have been of definite probative value on that issue.

Nevertheless, the Government gained knowledge and sight of the unlawfully possessed narcotics previously, through an illegal search and seizure, and the use of evidence, *for any purpose*, so obtained and subsequently suppressed, was vigorously condemned, without qualification, 32 years ago in *Silverthorne Lumber Company* v. *United States*, 251 U. S. 385, 40 S. Ct. 182.

In the Silverthorne case, the Government originally obtained documentary evidence by unconstitutional means, the indictment thereafter being quashed, and the evidence suppressed. Thereafter a new indictment was framed and the original evidence ordered produced. Upon refusal to produce, defendants were cited and fined for contempt. In reversing the lower Court, the Supreme Court, per Holmes, J., said:

> * * * The Government now, while in form repudiating and condemning the illegal seizure, seeks to maintain its right to avail itself of the knowledge obtained by that means which otherwise it would not have had. (l. c. 391.)

The action of the Government is further thus condemned:

> * * * It reduces the Fourth Amendment to a form of words * * * The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all * * *. If knowledge (of the
> 35 facts thus obtained) is gained from an independent source they may be proved like any others, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed * * *. (l. c. 392.)

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The principles of the Silverthorne case are constantly reiterated. *In re Sana Laboratories, Inc., et al., 115 F. (2d) 717, 718.* In the case at bar, the Government similarly condemns and repudiates the earlier illegal search, but maintains that, nevertheless, it may employ same for a special purpose in the instant case, to wit, impeachment, although it is "knowledge obtained by that means which otherwise it would not have had," all in the face of the injunction against same by the Supreme Court that such knowledge "shall not be used at all." Examination upon same was clearly prejudicial error, compounded by the use of rebuttal witnesses testifying to such illegally obtained information, all of which, standing alone, is so prejudicial as to warrant a new trial.

2. (a) The Court erred in admitting testimony by an officer, over defendant's objection, that defendant had once been arrested and that narcotics had been found in his car and in his apartment. In permitting such testimony, there was violated one of the most fundamental exclusionary rules of evidence, and the rights of defendant were highly prejudiced thereby. In *United States* v. *Klass, et al.*, 166 F. 373, a criminal action for violation of ceiling price regulations, the defendant denied prior violations, unrelated to the present charge. The Government produced witnesses in rebuttal to contradict the denial. In reversing the judgment, the Court held:

36 * * * Except in the event of a record of conviction, contradictory extrinsic evidence is not admissible, it being long settled that *the answer of the witness on cross-examination with respect to a collateral matter introduced for impeachment purposes concludes the inquiry.* (l. c. 376, 377.) [Emphasis supplied.]

Numerous cases and authorities clearly set forth this rule, and the basis thereof. *Martin* v. *United States*, 127 F. (2d) 865, 866; *United States* v. *Nettl*, 121 F. (2d) 927, 929, 930 (following and explaining Wigmore on use of extrinsic testimony).

(b) For the same reason above assigned, it was error to permit, over objection, Government witnesses to testify, in rebuttal, that defendant had made statements to them concerning his ability to procure large quantities of narcotics.

3. The Court erred in its failure to declare a mistrial and discharge the jury, after question by Government attorney, on cross-examination of defendant, in substance, as to whether defendant had not been arrested—the question being then interrupted by objection of defendant's counsel and request for discharge of the jury. The objection of defendant was sustained but the Court refused request for discharge of the jury. The Government did

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not, at any time thereafter, offer to prove same for impeachment purposes, and its complete abandonment of the line of questioning thereafter indicated that the question was asked in an attempt to use same to prove guilt. Such an attempt was clearly improper and constituted prejudicial error in the instant case, there being no exception to the rule shown. *Eley* v. *United States*, 117 F. (2d) 526; *United States* v. *Dressler*, 112 F. (2d) 972. By sustaining defendant's objection, but
37 failing to discharge the jury, the jury clearly was permitted to draw the inference that defendant had been arrested for some other offense, branding him thereby, although the offense was not material to prove the issues herein, and the action constituted prejudicial error. In *Sanford* v. *United States*, 98 F. (2d) 325, the Court stated the rule governing this point:

> It is improper, for impeachment purposes, to show accusation, arrest, or indictment, as well against the accused in a criminal trial as against a witness in any case * * * [citations omitted]. We have stated this fundamental rule of evidence only in the hope that the district attorney may bring it definitely to the attention of his assistants. Its breach, which we have had occasion to comment upon before, should not again occur. (l. c. 327.)

4. The Court erred in permitting persistent questioning of defendant, over objection, by counsel for Government on subject of a prior conviction for felony, where defendant stated he did not remember, the record of such conviction then being the only method of proving same.

The defendant did not give an unequivocal affirmance or denial in response to the initial questions concerning the conviction, thus amounting to a denial or equivocation. Pursuit of the subject thereafter, by constant questioning, reiterated and rephrased, without production of the record, served only to create prejudicial error. If the record of such conviction, if same exist, was not on hand, the fault lay with the Government, as omission of an essential element of its case. It could not cure its omission by continuous repetition of an unproved fact. Of a similar situation, the Court said, in reversing the conviction in *United States* v. *Nettl*, 121 F. (2d) 927:

38 > * * * the cross-examiner is bound by the witness' answer. The United States Attorney in the case at bar refused to be so bound. After receiving the negative answer he pursued the subject in three further questions * * * (The) prejudicial character (of the line of questioning) scarcely requires elaboration.

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"The purpose of the questions clearly was to keep persistently before the jury the assumption of damaging facts which could not be proven, and thus impress upon their minds the probability of the existence of the assumed facts upon which the questions were based. To say that such a course would not be prejudicial to defendant is to ignore human experience and the dictates of common sense." *People* v. *Mullings*, 83 Cal. 138, 23 P. 229. (l. c. 930.)

5. The Court erred in its rebuke to counsel for defendant before the jury, during cross-examination of a witness for the Government, narcotics agent Follmer. Following a long period of hesitation without answer to a question directed to him, and without objection to same, the witness appeared to be seeking some sign or indication of the proper answer from counsel for the Government or other source. (It is not suggested that any such signal or indication was made by Government counsel.) The witness was then asked, without attempting to quote, whether he had to obtain his answer from counsel for the Government. Thereupon the Court, of its own volition, *sua sponte*, halted the examination, and delivered to counsel for defendant a severe and extensive rebuke, and stated to him, before the jury, without attempting to quote, that counsel had better conduct himself like an attorney in a United States court, and that counsel was overstepping the bounds. Said reprimand carried with it the threat of citation for contempt, and implied that counsel was guilty of a violation of ethics, that same was one of a series
39 of violations, that counsel improperly attempted to impeach a Federal witness, and said reprimand resulted, without just cause, in the shaming of defendant's counsel before the jury, to the prejudice of defendant.

It is a universal rule that any person offered as a witness is subject to impeachment (*58 Am. Jur., Witnesses, Section 680*), including witnesses for the State. *Ibid.* Impeachment may be accomplished by cross-examination of a witness about any fact showing his interest, bias, *ignorance* or motives. [own emphasis.] *58 Am. Jur.* * * *, *Section 676; Sprinkle* v. *Davis*, 111 F. (2d) 825; *Meeks* v. *United States*, 163 F. (2d) 598.

The question was a proper question to illustrate the possible ignorance or bias of the witness, and could have been answered by a simple answer. In *Meeks* v. *United States*, 163 F. (2d) 598, the witness for the Government was asked whether he had any motive for testifying, other than to tell the truth. The Court stopped counsel, similarly reprimanded him, and fined him for contempt. (In the case at bar, the threat was implicit in the Court's rebuke.) The Appellate Court reversed the conviction, stating:

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(The question was) obviously proper. It is elementary that the motive of a witness is a proper subject of cross-examination. The arbitrary stopping of the witness' answer without even an objection from the plaintiff was harmful misconduct calculated to prejudice defendant's standing before the jury. (l. c. 601.)

(Refusal to allow the inquiry to continue) followed by the shaming of appellant's attorney before the jury for an entirely proper endeavor to protect his client (is misconduct constituting prejudicial error. (l. c. 601.)

40 In the case at bar, there is no indication that counsel had persevered in continuous improper examination contrary to the rulings of the Court.

The case, therefore, falls within the rule of *Sprinkle* v. *Davis*, 111 F. (2d) 925, where a similar rebuke was delivered counsel. There it was stated:

> * * * Actions taken by counsel during the course of a trial under a mistaken view of the law do not constitute contempt of court, and a careful examination of the record convinces us that there was no such perseverance by defendants' counsel in a mistaken point of view contrary to the rulings of the court as to constitute improper conduct on (his) part * * *. (l. c. 930.)

6. The Court erred in failing to instruct the jury on the use of an alias by the defendant, after counsel for the Government was permitted to cross examine on the point over objection of defendant that the matter was not relevant to the issues and was collateral thereto.

Questioning defendant upon his prior use of an alias was clearly prejudicial, and outside the issues of the case, and without any other offer having been made, it must be assumed, was done purely for the purpose of degrading him. As such, the question was highly improper, and, over timely objection made by defendant's counsel, should have been stricken. *58 Am. Jur., Section 694, Witnesses.*

Failing to sustain the objection of defendant in the first instance, the Court erred in failure to instruct the jury on the use of an alias by the defendant, in order to save such evidence
41 from application to the harmful and prejudicial purpose for which it was designed. *United States* v. *Waldon*, 114 F. (2d) 982.

In spite of a great mass of direct and circumstantial evidence adduced by the Government, which the jury could have believed, and upon which it might have based its conviction, nevertheless, the errors hereinbefore set forth are so prejudicial as to have

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prevented a fair trial for defendant, and require that defendant be granted a new trial. That award of a new trial is proper under the circumstances may be shown by the opinion in *Meeks* v. *United States*, 163 F. (2d) 598:

> Apart from these three errors, it is true that there was other evidence strongly adverse to appellant which the jury may or may not have believed. However, the Supreme Court does not permit an appellate court to speculate as to what witnesses the jury would believe or disbelieve. Indeed, in view of the fundamental character of these errors *we may not affirm, even if we are "without doubt" of appellant's guilt.* In the recent case of *Bollenbach* v. *United States*, 326 U. S. 607, 614, 615, 66 S. Ct. 402, 406, 90 L. Ed. 350, that Court, in reversing on an error in the trial court's instruction, stated "* * * In view of the Government's insistence that there is abundant evidence to indicate that Bollenbach was implicated in the criminal enterprise from the beginning, it may not be amiss to remind that *the question is not whether guilt may be spelt out of a record*, but whether guilt has been found by a jury according to the procedure and standards appropriate for criminal trials in the federal courts. * * * From presuming too often all errors to be 'harmless' *if only the appellate court is left without doubt that one who claims its corrective process is, after all, guilty.* In view of the place of importance that trial by jury has in our Bill of Rights, it is not to be supposed that Congress intended to substitute the belief of appellate judges in the guilt of an accused, however, justifiably engendered by the dead record, for ascertainment of guilt by a jury under appropriate judicial guidance, however cumbersome that process may be. [Emphasis supplied.] (l. c. 602.)

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HERBERT M. ROPE,
Attorney for Defendant, 711 Waltower Building, Kansas City, Missouri, Victor 3377.

Service of above Suggestions in Support of Defendant's Motion for New Trial acknowledged this February 11, 1952.

SAM WEAR,
United States Attorney.
By HUGH A. MINER,
Assistant United States Attorney.

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43 In the United States District Court for the Western District of Missouri, Western Division

No. 18225

UNITED STATES OF AMERICA, PLAINTIFF

v.

SAM WALDER, DEFENDANT

DEFENDANT'S REQUEST FOR ORAL ARGUMENT ON MOTION

Comes now the defendant, Sam Walder, and, said defendant having filed his motion for new trial in the above cause on the 11th day of February 1952, respectfully requests that the Court hear oral argument on said Motion.

HERBERT M. ROPE,
Attorney for Defendant, 711 Waltower Building, Kansas City, Missouri, Victor 3377.

Service of above request for oral argument on Defendant's Motion for New Trial acknowledged this 13th day of February 1952.

SAM WEAR,
United States Attorney,
By FRED L. HOWARD,
Assistant United States Attorney.

44 In the District Court of the United States of America for the Western District of Missouri, Western Division

No. 18225

UNITED STATES OF AMERICA, PLAINTIFF

v.

SAM WALDER, DEFENDANT

ORDER

For good cause shown the Court being fully advised in the premises,

It is hereby ordered, adjudged, and decreed that the United States of America, Plaintiff herein, is given until on or before February 21, 1952, to file Suggestions in Opposition to the Motion for New Trial heretofore filed by the defendant in the above styled case.

Dated at Kansas City, Missouri, this 15th day of February 1952.

R. M. DUNCAN,
Judge.

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46 In the United States District Court for the Western District of Missouri, Western Division

No. 18225

UNITED STATES OF AMERICA, PLAINTIFF

v.

SAM WALDER, DEFENDANT

SUGGESTIONS IN OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL

The Government, by William Aull III, Assistant United States attorney for the Western District of Missouri, files herewith Suggestions in Opposition to Defendant's Motion for New Trial.

In his Motion for New Trial, defendant enumerates six grounds as basis thereof. As to the first ground of the defendant's motion, objection was made by said defendant as to certain impeaching testimony elicited on behalf of the Government. In said case, defendant took the witness stand in his own behalf. Among other statements made by him in response to questions of counsel on direct examination, was one to the effect that he had never had any narcotics in his possession, nor had he had any connection therewith except as prescribed by a physician.

On cross-examination, defendant was specifically interrogated respecting the evening of February 19, 1950, and in particular whether or not on said evening he turned over to certain narcotic agents one capsule of heroin. He testified in the negative.

He was also asked as to whether or not on February 24, 1950, he made certain statements to narcotic agents in Kansas City respecting his connections in the narcotic traffic in
47 Chicago and elsewhere. Defendant denied making such statements.

In rebuttal the Government offered agents of the Narcotic Bureau who testified that on February 19, 1950, defendant turned over to them one capsule of heroin, and that further on February 24, 1950, he had made certain statements to them in connection with narcotic activities in Chicago, which exact statement defendant had denied on cross examination. It is contended that this evidence was properly introduced for the purpose of impeaching the defendant. It is contended that he "opened the door" as to his past narcotic dealings as a result of the questions propounded to him on direct examination by his attorney relative to whether or not he had ever had any connections with narcotic activities.

It would indeed be a strang system of jurisprudence to allow defendant to make such an assertion from the witness stand before a jury and then to forbid the Government to impeach such a statement.

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As is stated in the case of *United States* v. *Corrigan*, 168 F. 2d. 641, under the doctrine of "opening the door", if one party to the litigation puts in evidence part of the document or correspondence or conversation which is detrimental to the opposing party, the latter may introduce the balance of documents, correspondence, or conversation in order to explain or rebut adverse inferences which might arise from the fragmentary or incomplete character of evidence introduced by his adversary.

See also *Haffa* v. *United States*, 36 F. 2d. 1, certiorari denied, 281 U. S. 727, wherein testimony that the defendant admitted bribing prohibition agents was held admissible to rebut defendant's testimony that he had never engaged in the liquor business.

48 See also *Dowling* v. *United States*, 153 F. 2d 353, certiorari denied, 328 U. S. 848, rehearing denied, 329 U. S. 820. In the above case the defendant was charged with selling whiskey above ceiling price and had testified on cross examination that he had never sold any whiskey, over the ceiling. Testimony as to over-payments made to defendants under circumstances similar to those charged in the indictment are not incompetent because they tended to show crimes other than those charged in the indictment, but rather such testimony was proper rebuttal testimony going to the *credibility of the defendant.*

In *Brady* v. *United States*, 148 F. 2d 394, a Ninth Circuit opinion, defendant was prosecuted for receiving, concealing and transporting narcotics. The Government introduced evidence that defendants, while awaiting trial, underwent treatment in a sanitarium for narcotic addiction under assumed names. This the court held was relevant to rebut one defendant's testimony that he was not a narcotic addict.

See also *United States* v. *Pincourt*, 159 F. 2d 917. In said case the evidence of the Government's rebuttal witness was properly admitted, as against the contention of defendant, that such evidence was in contradiction of a collateral matter developed in cross-examination of the defendant. There was ample foundation for testimony from defendant's direct examination, and the particular issue involved was important.

It is submitted that the *Silverthorne Lumber Company* case cited by defendant is not in point. In that case the evidence which had been originally suppressed, was ordered produced relative to obtaining a new indictment. The suppressed evidence went to the substance of the pending cause. Such is clearly not the case in the instant matter. We are concerned exclusively with intro-

49 duction of this testimony for the purpose of impeaching the credibility of the defendant, who had first "opened the door" for the introduction of such evidence.

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See also *Wigmore on Evidence*, Section 2184 (a), as to exclusion of *contraband* evidence from the general exclusionary rule.

In *Gibson* v. *United States*, 149 F. 2d 381, certiorari denied, 326 U. S. 724, the evidence respecting the first count charging violation of the Marihuana Tax Laws was obtained in violation of defendant's constitutional rights against unreasonable searches and seizure. However, while defendant was under illegal arrest he volunteered evidence which was the basis of the second count charging another violation of the Marihuana Tax Law. The court held that the rejection of the volunteered information was not required and the admission of testimony concerning the first count was not so prejudicial as to necessitate a reversal as to the second count. The court also held that although defendant was under illegal arrest when he volunteered evidence without force or compulsion or promise of reward that nonetheless this did not require the rejection of such evidence. It would appear that the Gibson case goes beyond the facts of the instant case.

Further, in the case of *Bracey* v. *United States*, 142 F. 2d 85, certiorari denied, 322 U. S. 762, the court holds that evidence which incidentally reveals the commission of another crime, other than the one named in the indictment, may be accepted if it tends to defeat the defensive theory or *rebut an issue raised by the defense.*

It has also been held that evidence of *arrest* for a crime not covered by the indictment, although not ordinarily admissible against the accused, may become admissible if it tends to prove a fact relevant to the crime charged in the indictment, and there
50 is no error in admitting the testimony unless it manifestly appears that it has no bearing on the question at issue and is calculated to prejudice the accused in the minds of jurors. See *Hilliard* v. *United States*, 121 U. S. 992, certiorari denied, 314 U. S. 627.

It is further submitted that the impeachment of defendant in view of his testimony was not impeachment respecting a collateral matter. See the Eighth Circuit opinion of *Nigro* v. *United States*, 117 F. 2d 624. This was a case involving the violation of the Harrison Narcotic Act and the Eighth Circuit held that evidence reflecting the appellant had issued illegal prescriptions to addicts other than to the person named in the indictment, would have been admissible evidence. Thus, it must be assumed the evidence was not collateral in nature.

See also *Wigmore on Evidence*, Section 1019, wherein it is held that the only reasons for excluding evidence as to the collateral issues is that it would amount to either an *unfair* surprise or a *confusion of the issues.* Clearly, neither of the above could apply in the instant case.

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It is further noted by practically all jurisdictions that the trial court has *discretion* in allowing testimony which discloses the purpose, knowledge, or design of a particular person. See *Glasser* v. *United States*, 315 U. S. 60, rehearing denied, 315 U. S. 827. The court in the same case held that in a conspiracy prosecution, the trial judge could, in his discretion, allow testimony which tended to throw light upon a particular fact, or to explain the conduct of the defendant, or show his purpose, knowledge, or design, notwithstanding the fact that this testimony might also tend to show his guilt of an independent crime.

The Eighth Circuit in the case of *Blodgett* v. *United States*, 161 F. 2d 47, has stated that the trial court has
51 discretion in allowing testimony which discloses purpose, knowledge, or design of a particular person.

It is thus submitted that the contentions of the defendant in Paragraph 1 are groundless.

In Paragraph 2 of defendant's motion, it is the recollection of the undersigned that no evidence was introduced on behalf of the Government, either by direct or cross examination, that the defendant had once been arrested and narcotics had been found in his car. Defendant was merely asked whether or not on the date in question he allowed certain narcotic agents into his apartment and turned over to them one capsule of heroin. The matter of collateral issues has been gone into above.

Allegations contained in Paragraph 3 of defendant's motion are completely groundless in that no error was committed in view of the fact that defendant at a later time in his cross examination finally admitted that he had been convicted of the offense of grand larceny in the State of Kansas under the name of George Hendricks.

As to Paragraph 4 of defendant's motion, it is likewise submitted that grounds therein alleged are also without foundation. There is no doubt but that a witness may be interrogated concerning a prior conviction for felony. Defendant's answers to statements propounded to him in this regard by attorney for the Government were both evasive and contemptuous. It was manifest at the trial that defendant was attempting to evade questions properly propounded to him. Defendant did not negative the questions asked but merely attempted to avoid answering them. Clearly, the pursuit of such testimony is not only correct, but an attorney would be derelict in his duty were he not to pursue such a course.

52 In Paragraph 5 defendant objects to a rebuke from the court to defendant's counsel during the cross examination of Government's witness, Narcotic Agent Follmer. It is the con-

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tention of the Government that the court's rebuke of defendant's counsel was correct and proper. If witness was attempting to obtain information as to what answer to make to the question of defendant's counsel or if any party was attempting to signal witness, either or both of said parties would be in contempt of court. It would have been proper for counsel for the defendant to have directed the matter to the court's attention for proper disposition. Under no circumstances was it a matter to be directed to the attention of the jury as it had no place in the instant case. It is the belief of the Government that actions of defendant's counsel were a mere theatrical attempt to curry favor with the jury and to prejudice said jury against the Government and the Government's witness Follmer.

There was no attempt to impeach this witness as is contended by defendant in his Suggestions in Support of his Motion. It is admitted that any witness may be impeached by proper procedure, and it is admitted that this may be accomplished by cross examination. However, in the instant case no such procedure was followed.

It is contended the court was perfectly justified in rebuking defendant's counsel; and it is further contended that the court acted wisely and properly in the premises, and that defendant's counsel bargained for that which he received.

In Paragraph 6 defendant complains that the court erred in failing to instruct the jury on the use of an alias by defendant after counsel for the Government was permitted to cross-examine on this point over defendant's objection. As the evidence
53 points out, defendant Walder also used the name of George Hendricks and was convicted of the offense of grand larceny under the name of George Hendricks. In order to impeach defendant Walder by means of his prior conviction, it would be necessary to first establish the fact that defendant Walder and George Hendricks were one and the same person. This was done by means of cross examination. It was clearly relevant to the issue of impeachment of the accused. The facts of the case further reflect that defendant's counsel did not request the instructions on the use of an alias by the defendant, and thus is in no position to complain if such was not given.

In conclusion, the Government contends the trial and verdict were both proper and should stand, and that defendant's Motion for a New Trial should be overruled.

Respectfully submitted.

SAM M. WEAR,
United States Attorney.
By WILLIAM AULL III,
Assistant United States Attorney.

BLEED THROUGH– POOR COPY

I certify that a copy of the foregoing Suggestions in Opposition to Defendant's Motion for New Trial were mailed to the defendant's attorney, Mr. Herbert M. Rope, Attorney at Law, 711 Waltower Building, Kansas City, Missouri, this date.

WILLIAM AULL III.

55 In the United States District Court

[Title omitted.]

NOTICE OF APPEAL—FILED MARCH 7, 1952

1. Appellant: Sam Walder, County Jail, Kansas City, Missouri.

2. Appellant's attorney: Kenneth K. Simon, 210 West 8th Street, Room 223, Kansas City 6, Missouri.

3. Offense: Unlawful sale of narcotics (four counts).

4. Concise statement of judgment: Appellant was tried on January 29, 1952, by a jury under an indictment charging sale of narcotics in four counts, was found guilty, and sentenced on January 30, 1952, to five (5) years on each count, said sentences to run consecutively for each of the first three counts, and the sentence on the last count to run concurrently with the sentence on Counts I, II, and III. Appellant filed his motion for a Newtrial on February 11, 1952 (having been granted until said date by order of the Court dated February 2, 1952) and on February 28, 1952, said motion was overruled.

5. Name of Institution where confined: County Jail, Kansas City, Jackson County, Missouri.

6. I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Eighth Judicial District Circuit from the above stated judgment.

SAM WALDER,
Kenneth K. Simon,
KENNETH K. SIMON,
Attorney for Appellant, 210 West 8th Street, Room 223, Kansas City 6, Missouri.

Dated: MARCH 7, 1952.

Copy delivered to William Aull, III, Assistant United States Attorney.

W. W. CASTER,
Deputy Clerk.

56 [File endorsement omitted.]

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59

KANSAS CITY, MO., *March 10, 1952.*

Hon. E. E. KOCH,
Clerk, United States Court of Appeals, Eighth Circuit,
St. Louis, Mo.

In Re: *United States* v. *Sam Walder*, No. 18225—Criminal

DEAR SIR: Herewith, I am enclosing duplicate Notice of Appeal, together with a certified copy of the docket entries in the above-entitled case. The defendant paid the filing fee of $5.00 for filing Notice of Appeal. You will observe by the docket entries that the defendant has made application to prosecute the appeal in forma pauperis. That application has not been ruled on by the Court yet.

Yours very truly,

A. L. ARNOLD,
Clerk.
By W. W. CASTER,
Deputy.

60

United States Court of Appeals for the Eighth Circuit
ST. LOUIS 1, MO., *March 12, 1952.*

No. ——. *Sam Walder, Appellant*, v. *United States of America*

Mr. A. L. ARNOLD,
Clerk, U. S. District Court,
Kansas City, Mo.

DEAR MR. ARNOLD: Your letter of the 10th instant received enclosing duplicate notice of appeal together with certified copy of docket entries in the above case. It is noted that the defendant paid the filing fee of $5.00 for filing the notice of appeal and also filed application to prosecute the appeal in forma pauperis but that such application has not yet been ruled upon by the Court.

If you have an extra copy of the docket entries in the above case I will ask that you kindly forward the same to me.

Very truly yours,

E. E. KOCH,
Clerk.
By EUGENE C. FISHER,
Deputy Clerk.

61

KANSAS CITY, MO., *March 13, 1952.*

Hon. E. E. KOCH,
Clerk, U. S. Court of Appeals, Eighth Circuit,
St. Louis, Mo.

In Re: *United States* v. *Sam Walder*, No. 18225—Criminal

DEAR SIR: Your letter of the 12th instant received, requesting an extra copy of the docket entries in the above entitled case. In compliance with your request therein, I am enclosing a certified copy of same. Hereafter we will try to remember to enclose two copies with Notice of Appeal.

Yours very truly,

A. L. ARNOLD,
Clerk.
By W. W. CASTER,
Deputy.

62

KANSAS CITY, MO., *June 4, 1952.*

Hon. E. E. Koch,
Clerk, U. S. Court of Appeals, Eighth Circuit,
St. Louis, Mo.

In Re: *United States* v. *Sam Walder*, No. 18225—Criminal

DEAR SIR: I am in receipt of your letter of June 2, requesting a certified copy of court order, denying defendant's application for leave to proceed on appeal in forma pauperis. It was not an order signed by the Court, but an oral order from the bench. In compliance with your request, I am herewith enclosing a certified copy of the record entry, denying defendant's said application, in the above entitled case.

Yours very truly,

A. L. ARNOLD,
Clerk.
By W. W. CASTER,
Deputy.

63 United States Court of Appeals for the Eighth Circuit

St. Louis 1, Mo., *June 2, 1952.*

No. ——. *Sam Walder, Appellant,* v. *United States of America*

Mr. A. L. Arnold,
Clerk, U. S. District Court,
Kansas City, Mo.

(Attention: Mr. W. W. Caster, Deputy.)

Dear Sir: In the above case the appellant has advised this office that your Court denied his motion for leave to proceed on the appeal in forma pauperis and if that be correct I will ask that you kindly forward a certified copy of such Order to me.

Very truly yours,

E. E. Koch,
Clerk.

By Eugene C. Fisher,
Deputy Clerk.

64 In the District Court of the United States of America for the Western Division of the Western District of Missouri

No. 18225

United States
v.
Sam Walder

Friday, March 14, 1952.

Defendant appears in open court in person and by counsel, Kenneth Simon, for hearing on defendant's application to prosecute appeal in forma pauperis. Defendant presents testimony on his behalf on said application and thereafter the Court denies same. Defendant requests that the Court fix appeal bond. Bond is fixed by the Court at the sum of $30,000.00.

I, A. L. Arnold, Clerk of the District Court of the United States, do hereby certify that the above and foregoing is a true, correct, and complete copy of the record entry of March 14, 1952, in the above entitled case, as the same appears of record in my office. Said ruling made by the Honorable Richard M. Duncan, United States District Judge for the Western District of Missouri.

BLEED THROUGH– POOR COPY

In testimony whereof, I hereunto set my hand as Clerk, and affix the seal of said court. Done at office in Kansas City, Missouri, this 4th day of June 1952.

[SEAL]

A. L. ARNOLD,
Clerk.
By W. W. CASTER,
Deputy Clerk.

65 United States Court of Appeals for the Eighth Circuit

No. ——. *Sam Walder, Appellant,* v. *United States of America*

ST. LOUIS 1, MO., *June 5, 1952.*

Mr. A. L. ARNOLD,
Clerk, U. S. District Court,
Kansas City, Mo.

(Attention: Mr. W. W. Caster, Deputy.)

DEAR MR. ARNOLD: Your letter of the 4th instant has been received enclosing certified copy of record entry of the District Court denying the application of defendant to prosecute his appeal in forma pauperis for which please accept my thanks.

The record entry does not contain any mention as to whether the District Judge certified as to whether there was any merits to the appeal and I will ask you to kindly advise me whether such a certificate was made by the District Judge and if so kindly send a copy thereof to me.

Very truly yours,

E. E. KOCH,
Clerk.
By EUGENE C. FISHER,
Deputy Clerk.

66 KANSAS CITY, MO., *June 9, 1952.*

Hon. E. E. KOCH,
Clerk, U. S. Court of Appeals,
Eighth Circuit, St. Louis, Mo.

In Re: *United States* v. *Sam Walder*, No. 18225—Crim.

DEAR SIR: I am in receipt of your letter of June 5th, relative to whether the Court's order, denying defendant leave to prosecute an appeal in forma pauperis, mentioned whether or not there was any merit to the appeal. The record entry, a copy of which I mailed to you, did not touch upon that phase. I have taken your

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letter to Judge Duncan, and received his letter to this office in reply. I am enclosing a certified copy of the letter which will explain the situation to you.

Yours very truly,

A. L. ARNOLD,
Clerk.
By W. W. CASTER,
Deputy.

67 United States District Court, Eastern and Western Districts of Missouri

KANSAS CITY 6, MO., *June 9, 1952.*

MR. A. L. ARNOLD,
Clerk, United States District Court,
United States Court House, Kansas City, Mo.

Re: *United States* v. *Sam Walder*, Criminal No. 18225

DEAR MR. ARNOLD: You have handed me the letter of E. E. Koch, Clerk, United States Court of Appeals relative to the record made at the time of the appellant's application to prosecute his appeal in forma pauperis, and the denial thereof.

Apparently the court made no finding at the time as to why the application was denied. The application was presented to the court and there was evidence introduced as to the financial status of the applicant. The question of whether or not the appeal was taken in good faith, or whether or not it was without merit, was not considered by the court at the time.

Although I can frankly say I think that it is without merit, I should not like to certify that it was not taken in good faith. The evidence throughout the trial indicated that applicant was one of the leaders of the narcotic ring in Kansas City and had been for some time.

As I recall, on the application to proceed in forma pauperis, the evidence indicated that the appellant at one time had considerable property, including a Cadillac automobile; that the automobile was mortgaged, for a considerable sum, and that the mortgagor had disposed of the property; he was arrested in one of the western states and returned to Kansas City, released on $5,000.00 bond, later reduced to $3,500.00. At the time of the hearing he was asked where the automobile was, and he declined to answer on the ground that an answer might tend to incriminate him.

68 The court sustained an objection to the question, but felt that in view of his refusal to answer, and the further

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fact that he had been able to employ counsel to represent him in the trial of the case, and another and different counsel to represent him in the preparation of Motion for New Trial and the application to appeal in forma pauperis, that the court was not justified in permitting him to appeal in forma pauperis, under the evidence.

The court felt that he was able to provide the money for the cost of the transcript and the appeal if he desired to appeal.

This may be certified to the Appellate Court if you desire.

Very truly yours,

R. M. Duncan,
RICHARD M. DUNCAN,
District Judge.

Filed June 9, 1952.

A. L. ARNOLD,
Clerk.
By W. W. CASH,
Deputy.

69 United States Court of Appeals for the Eighth Circuit

ST. LOUIS 1, MO., *June 10, 1952.*

No. ——. *Sam Walder* v. *United States*

Mr. A. L. ARNOLD,
Clerk, U. S. District Court,
Kansas City, Mo.

(Attention: Mr. W. W. Caster, Deputy.)

DEAR SIR: Your letter of the 9th instant has been received with reference to the above case and enclosing certified copy of letter from Judge Duncan to you regarding the application of the appellant to prosecute his appeal in forma pauperis and the denial thereof for which please accept my thanks. The letter will be placed with the other files in the case.

Very truly yours,

E. E. KOCH,
Clerk.
By EUGENE C. FISHER,
Deputy Clerk.

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70 United States Court of Appeals for the Eighth Circuit

SEPTEMBER TERM, 1951

No. 14654

SAM WALDER, APPELLANT

v.

UNITED STATES OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

Under the provisions of the Rules of Criminal Procedure the Clerk of the United States District Court for the Western District of Missouri, has forwarded the Duplicate Notice of Appeal filed by Appellant March 7, 1952, from the judgment and sentence of said District Court of January 30, 1952 (motion for new trial overruled February 28, 1952), in cause No. 18225, and this, together with Certified Copy of Statement of Docket Entries was filed in this Court on March 12, 1952. The Clerk of said District Court has also furnished certified copy of the order of March 14th, 1952, denying application of appellant to prosecute the appeal in forma pauperis, which order was entered after hearing in open court, but the Judge did not certify that the appeal was not taken in good faith.

Appellant has now sent to the Clerk of this Court his application for appeal as a poor person with Suggestions in Support, in which he prays that he be allowed to prosecute the appeal without prepayment of fees or costs and that a typewritten transcript of proceedings in the trial court be furnished to him for use in prosecuting the appeal without the necessity of printing the same. The permission to appeal in forma pauperis rests in the first instance with the Court in which the proceeding was commenced. Smith v. Johnston, 9 Cir. 109 F. 2d 152, and Higgins v. Steele, 8th Cir. 195 F. 2d 366.

After consideration of the application of appellant and suggestions in support, there being no opposition thereto, it is the opinion of this Court that said application should be and is hereby granted, and the said District Court is hereby ordered to transmit the original files to the Clerk of this Court at St. Louis, Missouri, for the consideration of this appeal.

71 The docketing of the appeal in this Court will be without prepayment of costs of fees and the case may be presented upon the original files of the District Court and upon five clear legible typewritten briefs for appellant.

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And it is further Ordered by this Court that when this case is reached on the calendar it will be taken by the Court as submitted on briefs without oral argument for either of the parties.

JULY 16, 1952.

72 United States Court of Appeals for the Eighth Circuit

I, E. E. Koch, Clerk of the United States Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing two pages contain a full, true and complete copy of the order of this Court entered on the 16th day of July 1952, granting leave to appellant to prosecute appeal in forma pauperis, and directing the Clerk of the United States District Court for the Western District of Missouri to transmit the original files to the Clerk of this Court in the case of *Sam Walder, Appellant*, v. *United States of America*, No. 14654, as full, true and complete as the original of the same remains on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Court of Appeals for the Eighth Circuit, at of office in the City of St. Louis, Missouri, this 18th day of July A. D. 1952.

[SEAL]

E. E. KOCH,
Clerk of the United States Court of Appeals for the Eighth Circuit.

75 In the United States District Court for the Western District of Missouri, Western Division

No. 18225

THE UNITED STATES OF AMERICA, PLAINTIFF,

v.

SAM WALDER, DEFENDANT

TRANSCRIPT OF PROCEEDINGS

Be it remembered, that heretofore, on Tuesday, January 29, 1952, the above entitled cause came on regularly for hearing before the Honorable Richard M. Duncan, District Judge, and a jury, duly empaneled.

Appearances: The Plaintiff was represented by Mr. William Aull, III, Assistant United States Attorney; The Defendant was present in person and represented by Mr. Herbert M. Rope, of the firm of Rope and Rope, Kansas City, Missouri.

Whereupon, the following proceedings were had and entered of record:

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76 The COURT. What do you say in United States versus Sam Walder?

Mr. AULL. The Government is ready.

Mr. ROPE. The defendant is ready, your Honor.

The COURT. Call a jury, Mr. Clerk.

Whereupon, a jury was selected and sworn to answer questions upon *voir dire*.

Following said *voir dire* examination, a jury was duly selected and sworn to try the cause.

The COURT. Now, then, Mr. Rope, you have some announcement you want to make.

Mr. ROPE. I don't believe there is anything else.

The COURT. You had an announcement?

Mr. ROPE. I will withdraw my motion.

The COURT. Very well.

Proceed with your statement.

Whereupon, counsel for plaintiff made his opening statement to the jury as follows:

Mr. AULL. May it please the Court, ladies and gentlemen of the jury, as has been stated by the Court, the case to be presented today is in the nature of a narcotics case dealing with the sale of heroin, a derivative of opium. The indictment returned by the Grand Jury is in four counts.

77 The evidence will be that on January 10th, slightly before that, on the 9th, to be exact, the man was contacted and on the 10th a sale of heroin was made by this defendant, Sam Walder, to one Everett Jenkins. Jenkins will be here to testify and will state that he went to Walder's apartment which is located at 2620 Prospect after he had been searched by the Government employees and given what is commonly known as advanced funds which is Government money, and sent out to make a purchase of heroin from this defendant. He will testify that this defendant at his home at 2620 Prospect, at his apartment, did sell him a package which turned out to be, as the chemist will testify, 4.8 grains of heroin in a small package.

The testimony will be that this witness was shadowed to the home of Walder which was late in the evening, and that this sale took place on the early morning of the 10th or about 1:45 in the morning. That is why I say this started on the 9th and ended up on the 10th.

The testimony will be further that the agent of the Government saw Walder leave his apartment, leave the building where his apartment was, with his Boxer dog right after this informant went in. He went back up to the apartment and then the informer came back up. That is the basis of Count I.

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Now, as is usual in these cases, and this case is no deviation, the Government employee, special employee as he is called, or special agent, informant, whatever you want to call him, is in this instance or was at the time the transaction took
78 place a drug addict. He was a user of drugs at the time and that he was, of course, by virtue of that fact able to make purchases and was able to make it in this instance.

The testimony will further be that he is at the present time an inmate of the Missouri State Penitentiary at Jefferson City, not for the crime of narcotics but for the crime of grand larceny, serving a four-year term.

Now, as to Count II of the indictment, that deals with the date of April 11, 1951.

The evidence will be that on that date another informant, special agent or special employee of the Government by the name of Henly Taylor was contacted by the agents of the Bureau of Narcotics and requested to attempt to purchase some more heroin from this defendant.

The evidence will be that the agent at this time and some considerable prior to that time, had knowledge that this defendant was dealing in heroin drugs.

The evidence will show that on the 11th of April, that this defendant sold to Henly Taylor, as a Government employee, 12.2 grains of heroin, that they were in the form of capsules, and were sold to him at a place at 2715 Prospect here in Kansas City, known as the Green Duck Tavern. That is a tavern down here located on 27th Street—or rather, on Prospect. This sale was consummated, this as well as the first sales and all the others, the em-
ployee was searched and given Government funds and was
79 shadowed as far as they could safely go without being seen, and then the purchase was made and he returned and turned over the evidence to him and they searched him and found that the money was gone and he had acquired the drugs. That is as to Count II.

The evidence will be that for these 10 capsules of heroin that he bought on that date that this agent of the Government paid to this defendant Sam Walder, the sum of $20.00.

The evidence will be in regard to Count III that an additional purchase was made on the following day by this same employee, Henly Taylor. At this time, this occasion, the same procedure took place, the search and the advance of money was given and he was able to purchase at that time ten more capsules of heroin and this time the chemist will state they contained 11.3 grains of heroin.

The evidence will be that on this occasion this defendant told Taylor, this informant, that hereafter he wouldn't sell him any

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more narcotics in quantities of less than $50.00 worth. In other words, he wanted Taylor to be what is commonly known as "a pusher" for him.

Mr. ROPE. We object to the improper conclusions on the part of counsel.

The COURT. The objection is overruled.

Mr. AULL. We will prove it, that he asked him to sell narcotics for him. And that in response to that at a later date, on
80 May 8, 1951, a further and additional purchase was made by this same employee, the same procedure was followed by the Government agents, searching, and this time they gave him $50.00.

The evidence will be that—I might get back to the third occasion to keep it straight, the one I was talking about that occurred on the 12th of April. The evidence will be that this transaction took place in a spot known as Wilson's Bar. That is another bar down on 18th Street here in Kansas City. Then back to the one I was referring to before I deviated, May 8th, the last purchase was made on May 8th where the Government gave him $50.00 to make the purchase.

The evidence will be that this agent after being properly searched and given the $50.00 went again to this defendant's apartment at 2620 Prospect and there consummated a sale; that he gave him the $50.00; that this defendant handed him a package containing capsules which were presumably heroin. That as the agent started to leave, he noticed that they didn't feel like there were 25 capsules there because they were supposed to be for $2.00 apiece, which was at that time the wholesale price, the retail price being $3.00. He was going to sell them to him for $2.00 apiece in view of the fact he was going to sell them for him. He didn't believe there were 25 capsules in there, so he searched, looked through the envelope and found out he was considerably short. After some conversation with this defendant, the defendant kept $16.00 and gave him $34.00 of the
81 $50.00 back. At that time he purchased 8 capsules at $2.00 apiece, which amounted to $16.00, and he got $34.00 of the $50.00 back. He in turn turned the $34.00 over and 8 capsules over to the agents of the Government which shadowed him, and that these again were analyzed by the chemist and the 8 capsules were found to contain 10 grains of heroin.

Now, briefly that is the evidence the Government will bring on the witness stand, four counts, the first occurring on January 10, 1951, the second on April 11, 1951, and a third on April 12, 1951, and the fourth on May 8, 1951, and if the evidence as detailed is presented on the stand, we will expect you to bring in a verdict of guilty on all counts.

The COURT. Do you desire to make a statement?

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Mr. ROPE. Yes, Your Honor.

Whereupon, counsel of defendant made his opening statement to the jury as follows:

Mr. ROPE. As you all know, this is a criminal case. It is a deadly serious case. You have all heard the counts, so it isn't necessary to reiterate and go over once again. You have been here a long time and this defendant will not delay you in your return to your duties. He did not institute these proceedings. They are designed, however, to deprive him——

Mr. AULL (interrupting). If the Court please, that is an improper statement.

82 The COURT. Yes, tell what you expect your evidence to show and you can argue it when the time comes.

Mr. ROPE. Thank you, Your Honor.

Now, as you all know, ladies and gentlemen, this indictment that you have been told by the Court is no evidence of any offense, and I know you will not consider it as such.

Now, ladies and gentlemen, what I say to you here right now as I speak to you in the opening statement for the defendant, and too, as you well know, is not evidence in this case, and certainly you will not consider it such. What I say to you is not evidence any more so, ladies and gentlemen, than what the attorney for the United States tells you, Mr. Aull, likewise is not evidence in this case. What Mr. Aull has told you here is what he hopes to prove by his evidence in this case.

Now, after you have heard all of the evidence in this case, and I repeat after you have heard all of the evidence, of course, as you know, you will retire to the jury room and weigh and sift that evidence and apply it to the charge which the Court makes to you, and then in justice and conscience arrive at your verdict in this case.

We believe that the defendant can show you to your satisfaction under the law of this state that the Government in this case has been misled and misinformed as to its evidence and that when all of the evidence in the case is produced, the defendant's evidence as well as the Government's evidence, that certainly in con-

83 science and in truth and in fairness, that you will feel bound to retire to your jury room and after considering the evidence, return a verdict of not guilty for this defendant. Thank you.

The COURT. All right, call your first witness.

PLAINTIFF'S CASE

Whereupon, the Plaintiff, to sustain the issues in its behalf, offered testimony, oral and documentary, and made admissions, as follows, to wit:

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Claude A. Follmer, called as a witness, on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. AULL:

Q. Will you state your name to the Court and jury, please?

A. Claude A. Follmer.

Q. You are an employee of the United States Government at the present time?

A. I am.

Q. What capacity?

A. Narcotics agent.

Q. How long have you been a narcotics agent?

A. Twenty-two and one-half years.

Q. How long have you been located in Kansas City?

A. All of that time except 18 months in Philadelphia and 14 months in St. Louis.

Q. How long have you been in Kansas City? How long
84 has it been since you have been away from Kansas City?

A. 1931.

Q. Do you know the defendant, Sam Walder?

A. Yes, sir.

Q. How long have you known him?

A. About two or two and a half years.

Q. Do you know Everett Jenkins?

A. I do.

Q. How long have you known him?

A. Ten or twelve years.

Q. Now, Mr. Follmer, will you state to the jury whether or not you had reason to believe on or about the 10th of January, 1951, this defendant was engaged in the sale of narcotics?

A. I did.

Mr. ROPE. Now, just a moment, if it please the Court.

The COURT. What is the question?

Mr. AULL. I asked him if he had occasion to know or to believe that on or about the 10th of January, 1951, this defendant was engaged in narcotics.

The COURT. The objection is overruled. You are laying a foundation for the reason?

Mr. AULL. Yes.

The COURT. Objection overruled.

Mr. ROPE. We save an exception to that ruling.

The COURT. All exceptions are saved. You don't have to take them. They are all saved to all rulings of the Court.

85 A. I did.

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By Mr. AULL:

Q. Now, on or about that date did you contact Everett Jenkins?

A. I did.

Q. Can you state where that was and what the circumstances were?

A. At about 8 o'clock on the night of January 9th, I accompanied Agents R. C. Witt and E. H. Hall to 17th and Highland Streets.

The COURT. Hall and who?

A. W-i-t-t.

By Mr. AULL:

Q. And Hall?

A. Yes.

Q. Who are they?

A. Narcotic agents.

Q. Here in Kansas City?

A. That is right. To 17th and Highland Streets, Kansas City, Missouri, where we met Everett Jenkins.

Q. What was the purpose of contacting him?

A. After meeting Jenkins we drove to various taverns and bars in the colored sections, the colored business districts of 17th and 18th Streets in an effort to locate Sam Walder. Finally, at about 1 o'clock that following morning, January 10th, we drove to the vicinity of 26th and Prospect, 27th and Prospect, where we met. Agent Witt, in my presence, and Agent Hall's presence searched the person of Jenkins and furnished him with $10.00 official advance funds.

Q. Will you just explain to the jury what that search was, please?

A. Agent Witt searched his pockets, the waistband and
86 fly of his trousers, the tops of his hose, and the sweatband of his hat, the lining.

Q. How about his billfold and papers and things of that kind?

A. He did.

Q. At that time did he have any narcotics?

A. He had no narcotics.

Q. Did he have any money, if you recall, about his person?

A. I don't recall that he did have any money on that occasion.

Q. What did you do. Was anything given to him?

A. He was furnished with $10.00 by Agent Witt.

Q. Was he told to do anything?

A. He was directed to attempt to purchase evidence from Walder, if possible.

Q. What happened?

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A. Jenkins then went to the Carver Apartments at 2620 Prospect Avenue where he entered the building.

Q. Do you know anybody that lives at the Carver Apartments?

A. Yes, at that time.

Q. Well, the other people that lived there——

Mr. ROPE (interrupting). Just a moment. Let me stop him, if it please the Court there, I would like to ask a qualifying question. Was it in your presence that the informer went to the apartments?

A. It was.

Mr. ROPE. You have stated that you knew that he went there.

87 The COURT. You can cross-examine the witness, when you get to it. Your time will come after awhile.

Mr. ROPE. We object to that.

The COURT. Objection overruled.

Mr. ROPE. We object to the question and answer and ask that it be stricken.

The COURT. The objection overruled.

The WITNESS. I saw him go to the Carver Apartments.

By Mr. AULL:

Q. I have asked you do you know anybody who at that time lived at the Carver Apartment?

A. At that time it was the residence of Sam Walder, he lived in apartment number 3.

Q. Will you state what else you saw after this employee Jenkins went to the Carver Apartment? Will you state to the Court whether or not he entered?

A. He did enter.

Q. What happened next?

A. About 15 minutes later I saw Sam Walder walking, come out of the Carver Apartment, walking a large Boxer dog.

The COURT. A What?

A. A Boxer dog. He walked north on the west side of Prospect to 26th Street, stood on the corner for a few minutes and then returned to the Carver Apartment with the dog.

Q. About what time was that, approximately?

A. It was about, oh, I would say between 1:15 and 1:30 when he came out.

88 Q. Is that in the afternoon or in the evening?

A. Early in the morning.

Q. What happened then after he returned to the Carver Apartments?

A. About 10 minutes later Jenkins came out.

Q. What did you see Jenkins do when he came out of the apartment?

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A. He came out of the apartment and walked to 26th and Wabash, the first block east of Prospect, where he got into the automobile and handed Agent Witt a small cellophane package containing some heroin, 5 grains, I believe.

Q. Mr. Follmer, from the time that Jenkins entered the Carver Apartment until he finally returned, and as you have testified came to your car, did you keep the Carver Apartment under surveillance?

A. We did.

Q. By "we," whom do you mean.

A. Agents Hall and Witt.

Q. The three of you?

A. Yes.

Q. With the exception of Jenkins and Walder did anyone enter or leave the Carver Apartment during that time that you were keeping it under surveillance?

A. I believe a taxi came and brought some lady.

Q. When was that?

A. During the time we were sitting there.

Q. Now, did you search or have a search made of Jenkins when he returned?

89 Mr. ROPE. Now, just a moment, if it pleases the Court, we object to that as being leading and suggestive.

The COURT. Overruled.

The WITNESS. May I have it again?

By Mr. AULL:

Q. Did you search or witness a search of Jenkins when he returned to the car?

A. I did.

Q. Who conducted the search?

A. Agent Witt.

Q. In your presence?

A. He did.

Q. What was found?

A. Jenkins had no other narcotics or other money on him at that time.

Q. Did he have any narcotics at all?

A. None.

Q. He did not return with any narcotics?

A. He returned with the package which he handed Witt and he was then searched and he had none.

Q. In addition to what he turned over to Witt there was none other found, is that correct?

A. That is right.

Q. Was that in the form of capsules or not?

A. It was loose heroin in a cellophane package.

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Q. Do you know what was done with that?

A. At that time we initialed a slip of paper and the following morning it was placed in a mechanically sealed evidence envelope and then submitted to the United States chemist.

90 Q. Did Agent Witt take it that night?

A. He did.

Q. Now, directing your attention to Count II, Mr. Follmer, state to the jury whether or not you had occasion to attempt to make another buy from this defendant on April 11th?

A. I did.

Q. Did you in company with the other agents secure a special employee to assist you in this endeavor?

A. We did.

Q. Who was that employee?

A. Henly Taylor.

Q. Did you meet Henly Taylor on the 11th of April?

A. We did.

Q. Will you state to the Court and jury the circumstances surrounding your meeting him on that day?

A. About 2 o'clock on the afternoon of April 11, 1951, Agents Hall and Witt and I met Henly Taylor at 10th and Lydia Streets. We then drove to a drug store at the northwest corner of 8th and Woodland Streets where Agent Witt went inside of the drug store with Taylor. They came out of the drug store a short time later and we drove to the vicinity of 26th and—well, it is on 26th Street between Prospect and Montgall where we parked the car. Here Agent Witt searched the person of Henly Taylor and furnished him with $20.00 Government money.

Q. What type of search was made on that occasion?

A. The same type. Through his pockets, waitband, fly.

91 Q. Were any narcotics found?

A. No narcotics. Taylor then went across, walked across Prospect Avenue and into the Green Duck Tavern which is located on the northwest corner of 26th and Prospect. The other officers and I went into the City Laundry which is directly across the street to the east on the southeast corner.

Q. Who are the other officers?

A. Agents Witt and Hall. A short time later, I will say around 3 o'clock, we received a message from Taylor and again shortly after 4 o'clock Taylor came over, we saw Taylor walk to the car and followed him over there. On this occasion Agent Witt again searched him and we drove him to the vicinity of 27th and Montgall where he got out of the car and we followed him to the Santa Fe Tavern which is about 3 or 4 doors south of the intersection of 27th and Prospect, on Prospect. It is on the east side of the street. I think the number is 2713 or 2715. Taylor went inside of

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the tavern and remained there for possibly 15 to 20 minutes. We were parked, the officers and I were parked at 27th and Lockridge, which is the first street——

Mr. ROPE. (interrupting). Let me stop you. If it please the Court, we object to this digression on the part of the witness as not being responsive to the question at all, and getting further and further afield from the narration of the circumstances surrounding that meeting.

92 Mr. AULL. If the Court please, that is a direct answer to the question.

The COURT. Overruled.

A. We saw Sam Walder approach from the south on the west side of Prospect Avenue. He stood there for a few moments looking across the street. At about the same time Taylor came out of the Santa Fe Tavern, looked over towards Walder.

Q. About how far were they apart?

A. Just across the street from each other.

Q. They were both outside?

A. Walder then walked across as if to meet Taylor and Taylor walked inside of the tavern followed by Walder. About 10 minutes later Taylor came out of the tavern. We followed him back around the corner to 27th and Mongall where he got into the Government automobile and turned over to Agent Witt 10 capsules of heroin which he had just purchased.

Mr. ROPE. We object to the last.

The COURT. Yes, objection sustained. That will be striken out.

By Mr. AULL:

Q. Just state what you know, not what he told you. Was he searched at that time?

A. He was.

Q. At the time of his return. What about the $20.00 that had been given to him? Was that on him?

A. He had no money.

Q. Were there any other narcotics other than the 10 cap-

93 sules which you have related he turned over to Agent Witt?

A. No other narcotics.

Q. Relating to Count III, Mr. Follmer, did you have occasion to direct this same employee, Henly Taylor, to attempt to make another purchase on the following day?

Mr. ROPE. We object to that, if the Court please, as being leading and suggestive entirely.

The COURT. I don't think so. It is a mere formal matter. Go ahead. The objection is overruled.

A. I did.

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By Mr. AULL:

Q. State to the Court and jury the circumstances surrounding your meeting with him and what happened.

A. At about 7:30 or 8 o'clock on the night of April 12th, Agent Shattuck, Witt and I again met Henly Taylor at 10th and Lydia Streets. We went to the drug store at 8th and Woodland where Taylor went inside for the purpose of making a telephone call. He returned to the car and we drove to the vicinity of 26th and Montgall where Agent Witt again searched Taylor and furnished him with $20.00 official advance funds.

Q. At the time was the same search as you have described in the previous counts made?

A. Yes.

Q. Did he have any other money on him other than the $20.00 you gave him?

A. He had no other funds.

Q. Then what happened?

94 A. Taylor then went into the Green Duck Tavern at the northwest—northwest corner of 27th—or 26th and Prospect and waited. A short time later Taylor came out and said it would be necessary for us to go to 18th Street. We then drove to the vicinity of 18th and Campbell where Agent Witt again searched Taylor's person, and gave Taylor 50 cents, I believe, spending money to——

Q. In addition?

A. In addition to the $20.00 which he had already given him.

Q. Then at the time you searched him were any narcotics on him?

A. He had no drugs.

Q. He still had the $20.00?

A. He had the $20.00.

Q. What happened next?

A. He went into Wilson's Tavern at 919 East 18th, and about 10 or 15 minutes later came out, got into the Government automobile there at 18th and Campbell and turned over to Agent Witt 10 capsules of heroin.

Q. About what time of day was this?

A. It was around 9:30.

Q. In the evening?

A. In the evening, yes.

Q. Did he have the $20.00 on him when he returned?

A. All he had was a small amount of change, I think it was 15 or 20 cents.

Q. Out of the 50 cents?

A. Yes, sir.

BLEED THROUGH— POOR COPY

95 Q. How about the $20.00, did he have that?
A. No.
Q. Did he have any other narcotics other than what was turned over to Agent Witt?
A. No other drugs.
Q. Directing your attention to the fourth count, May 8, 1951, I will ask you whether or not on that date you again had occasion to seek to make a purchase of narcotic drugs from this defendant?
A. I did.
Q. At that time what special employee did you engage?
A. Henly Taylor.
Q. The same man that helped you in the last two preceding occasions?
A. Yes.
Q. Will you state to the Court and jury where it was you contacted him, Henly Taylor, on that day, what the circumstances were, and what was done?
A. We met, that is, Agents Shattuck and Witt and I met Taylor at 10th and Lydia Streets, and we again drove to the same drug store I mentioned on previous occasions at 8th and Woodland, where Taylor entered to make a telephone call. He came back to the automobile and we drove to the vicinity of 26th and Montgall where Agent Witt again searched Taylor and furnished him with $50.00 Government funds.
Q. Was he requested to attempt to make a purchase from Walder?
A. Yes, we directed him.
96 Q. At that time was a thorough search made?
A. Yes, sir.
Q. By whom?
A. By Agent Witt.
Q. The same type of search as you have previously described?
A. Yes.
Q. Were any narcotic drugs found on the employee Taylor at that time?
A. He had no drugs.
Q. Did he have any money other than the $50.00 that you advanced to him?
A. I don't recall that he did.
Q. What happened then?
A. We then followed Taylor to the Carver Apartments at 2620 Prospect and saw him enter.
Q. That is the same place as the first count?
A. Yes.
Q. All right, sir. About what time of day was that?
A. It was about—let's see——

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Q. Do you recall whether it was daytime or nighttime?
A. Well, yes, it seems to me it was.
Q. If you don't recall——
A. I was trying to think. I am confusing it with the other business.
Mr. Rope. I object to that last statement on the part of the witness and ask it be stricken.
The Court. Yes, objection sustained.
97 Mr. Aull. Okay.

By Mr. Aull:

Q. Do you recall what happened after the purchase was made or after he went in the Carver Apartments?
A. He was in there possibly 30 or 45 minutes.
Q. What happened when he came out?
A. He again met us at 27th and Montgall, or 26th and Montgall.
Q. All of the time that he was in there you kept the apartment under surveillance?
A. We did.
Q. What happened when he met you there that afternoon?
A. He got into the Government car and handed Agent Witt a small cellophane package containing 8 capsules of heroin.
Q. Well, now, what about the money that had been given him, you said $50.00?
A. He also gave him $34.00 in change.
Q. Now, was he again searched?
A. He was.
Q. Were any other narcotic drugs, any drugs of any description found on him other than the 8 capsules that you testified to?
A. He had no other drugs.
Mr. Aull. You may inquire.

Cross-examination by Mr. Rope:

Q. Your name is Claude A. Follmer?
A. That is right.
Q. Where do you live, Mr. Follmer?
A. Kansas City, Missouri.
98 Q. What is your home address?
A. 6116 Paseo.
Q. How long have you lived there?
A. Since September of '41.
Q. You have lived there continuously since that time?
A. I have.
Q. You haven't worked with the Narcotics Bureau in any other city during that interim, is that right?
A. I have been recently working in Chicago.

BLEED THROUGH— POOR COPY

Q. How long have you been working in Chicago?
A. Since January 8th.
Q. Since January 8th of this year?
A. Yes.
Q. That is the first time you have been transferred, is that correct?
A. I am not transferred now. I am on special assignment.
Q. Just temporary assignment?
A. Yes, sir.
Q. Will you state the name again, the name of the other agents who were with you at the time of these alleged heroin transactions?
A. Well, as I recall on the first sale was Agents Hall and Witt.
Q. Now, just a minute, you say "as you recall"?
A. Yes.
Q. Are you certain about that?
A. Yes.

Q. Then it is a statement of fact, a certainty when you
99 say that as you recall those were the agents that were with you, is that right?

A. That is right.
Q. Who were the agents that were with you on the second occasion?
A. Agents Hall and Witt.
Q. Now, this time you are certain about that?
A. Yes.
Q. Now, are Agents Hall and Witt here in the courtroom today?
A. Yes.
Q. You see them both here?
A. Yes.
Q. I just wanted to find out if they are here, that is all.
A. Yes.
Q. Who were the agents that you say were with you on the third occasion, now?
A. Hall, Witt and Shattuck.
Q. And on the fourth occasion, do you recall that?
A. Witt and Shattuck.
Q. Are those the agents that always work together in a team?
A. Not necessarily.
Q. You just happened to be with those same agents each time on those four separate occasions, is that correct?
A. That is all the agents in the office.
Q. Well, then, you do generally work together, do you not?
A. Yes. Now, that is, we don't always all go together on every case.

Q. Who usually goes together?
100 A. Agent Witt and I used to go together.

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Q. What do you mean by "used to"? On what occasion?

A. Agent Witt is now in St. Louis.

The COURT. Now, let him answer the question. You asked him something and then you go on.

Mr. ROPE. I was afraid I confused him, your Honor.

The COURT. All right.

A. Agent Witt has since been transferred to St. Louis.

By Mr. ROPE:

Q. But he is here today?

A. He is here today.

Q. Well, all during the year of 1951, is it correct that all you agents, you and Witt and Hall and Shattuck all worked together as a team?

A. Not necessarily.

Q. Well, did you generally work with Agents Witt and Hall?

A. I usually worked with Agent Witt.

Q. When was he transferred to St. Louis?

A. About November, I believe.

Q. You believe it was about November of 1951?

A. Yes.

Q. And up until that time you and Agent Witt generally worked together?

A. Yes.

Q. And was that on almost every occasion when you had occasion to make an arrest, or as you call it, surveillance of a narcotics transaction, you and Agent Witt were together?

101 A. Usually.

Q. And how about Agent Hall?

A. He often worked with us.

Q. But not all the time?

A. Not all the time.

Q. But on these particular occasions he happened to be with you every time, is that right?

A. He wasn't with us on the fourth transaction, as I recall.

Q. Who did you say was with you on the fourth?

Mr. AULL. If the Court please, we have been into this three times. I want to object to it.

The COURT. Overruled.

A. Agents Witt and Shattuck.

By Mr. ROPE:

Q. Where was Agent Hall, do you know?

A. I don't know.

Q. He hadn't been transferred, had he?

A. No.

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Q. Now, you say you have known Everett Jenkins for some 10 or 12 years?

A. Yes.

Q. Do you remember where you first met Everett Jenkins?

A. I believe it was at the home of Doley Brashear.

Q. Was that while you were making a narcotics investigation?

A. No, I was just calling on Doley.

Q. Who is Doley?

A. He is deceased now. He is a former addict.

Q. Well, you were paying a social call on him?

A. No, but I had—we often contacted him.

102 Q. Was he one of your informers?

A. Yes.

Q. So that it was a business call at the time?

A. Yes.

Q. And you met Everett Jenkins at his house, is that right?

A. Yes.

Q. Was Jenkins there on business or social?

A. I couldn't state.

Q. You can't remember? When was the next time you saw Jenkins after that, do you remember that?

A. No, I couldn't.

Q. Well you saw him, I suppose, many times in 10 or 12 years, did you not?

A. Many times.

Q. Do you remember how many years ago you first contacted Jenkins with reference to working with you?

A. Possibly 3 or 4 years.

Q. Ten or twelve years ago when you met Jenkins at the home of Doley Brashear, the deceased party to whom you refer, did you know that Jenkins at that time was a narcotics addict?

A. No, I didn't know it. In fact, I don't know it now.

Q. Well, you do not know, you say, that he is an addict?

A. I do not know that he was an addict then.

Q. Do you know that he is now?

A. I know, I feel sure he isn't now.

Q. You feel he is or isn't?

103 A. Isn't now.

Q. Then, if the attorney for the United States, Mr. Aull, has stated here previously that Mr. Jenkins is an addict, then he is incorrect, is that right?

The COURT. Now, counsel never made any such statement. I am sorry.

Mr. ROPE. I am sorry if I misunderstood.

The COURT. Mr. Aull stated that he was now confined in the Missouri State Penitentiary.

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Mr. AULL. I said he was at the time.

Mr. ROPE. Then I withdraw my question.

The COURT. I don't mean to be abrupt with you, but you were mistaken about the fact.

By Mr. ROPE:

Q. All right, Mr. Follmer, you said that 10 or 12 years ago you didn't know whether or not Jenkins was an addict?

A. I don't know that he was then, no.

Q. Do you know that he has been?

A. I understand that he has been.

Q. As a matter of fact, you know that he has been?

A. Yes.

Q. Do you know that he has ever been cured of his addiction?

A. He has had occasions to have been cured, yes.

Q. Well, where has he been treated, do you know?

A. well, he has been confined at Lansing for about a year, I think, around 1945.

104 Q. What was he confined——

Mr. AULL (interrupting). If the Court please, I think that is improper to ask this witness.

The COURT. Well, he brought it out.

Mr. ROPE. The witness opened it up.

The COURT. Overruled.

By Mr. ROPE:

Q. What was he confined at Lansing for?

A. Larceny, grand larceny.

Q. For grand larceny?

A. Yes.

Q. Not for treatment for drug addiction?

A. No.

Q. When was he in Lansing, do you know?

A. I believe it was '45 or '46.

Q. During that period of time you were probably out of contact with him, isn't that correct?

A. While he was at Lansing, yes.

Q. When did Jenkins first start working for your crew as a Government informer or special investigator?

A. This is the first case that he, to my knowledge, that he actually took part in.

Q. This is the first time?

A. Yes.

Q. Have you ever worked with him before?

A. I have talked with him before.

Q. How many years ago was the first time you talked with him?

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A. Well, I have talked with him on a number of occasions, but 3 or 4 years ago was the first time I ever talked with
105 him about our business.

Q. Did you approach him at that time or did he approach you?

A. I approached him.

Q. What was your purpose in approaching him then?

A. To see if he would assist us.

Q. To see if he would assist you?

A. Yes.

Q. Well, you must have had some reason at that time then to know that he was a man who was in a position to assist you, is that right?

A. Yes.

Q. Then, did you know then, at that time, that he was a drug addict? I don't believe it has been stated definitely whether you knew or not. Just tell the jury whether you knew 3 or 4 years ago.

A. I never saw him use narcotics, but I understood he was addicted.

Q. You don't know that he has ever received any type of medical treatment for narcotic addiction?

A. I know of no treatment.

Q. You do not. You stated he has had several opportunities to receive treatment?

A. When confined.

Q. When confined, but you don't know that he has ever received any treatment?

A. No, I don't.

Q. You don't know at this time, then, whether or not he is a drug addict?

106 The COURT. Well, now, Mr. Rope, let's be fair. The Court doesn't want—counsel for the Government is not objecting, but I don't know whether you have had much experience with these matters or not, but let's assume that while he is in the Missouri Penitentiary that he is not a drug addict. Let's just assume that. It isn't necessary to take treatments for the cure of drugs. The mere absence from it will do the same thing the treatment does if they don't go back on it. Let's not leave the implication that he is now a drug addict while he is in the Missouri Penitentiary. If you want to go into these matters, the Court is going to let you go as far as you want to discredit this witness or this informer but let's not get into the question of whether he is now a dope addict because he is in the penitentiary, and let's just assume that he is not at this time.

Mr. ROPE. Well, if it please the Court——

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The COURT. He was addicted.

Mr. ROPE. The question has a very material bearing upon this case and the defendant respectfully objects to the ruling of the Court.

The COURT. All right. If he was an addict at the time this was going on, you have a right to show it, but what he is today has no bearing on this case, that is, his addiction.

107 Mr. ROPE. I don't mean to refer to this very moment, your Honor, if I gave that impression.

The COURT. Let's confine it to the time of these transactions and not to the present time. Let's keep the record clear, please.

Mr. ROPE. The defendant will also respectfully take exception to it.

The COURT. Now, Mr. Rope, I told you in the beginning that all exceptions are saved to the ruling of the Court and I think it shows that. You don't have to take them.

Mr. ROPE. If it please the Court, I do not mean to state an exception but an objection to the observation of the Court.

The COURT. All right.

Mr. ROPE. That a drug addiction may be cured without medical treatment, I don't know myself.

The COURT. That is not the element in this case and it makes no difference. It is not one of the things in this case and as the Court has stated, the Court wants to be fair with you, you can show anything you want that you can show within the realm of reason about this informer, as to what his condition was, his surroundings, his relationship to the agents, and his addiction, or otherwise, at the time of these transactions, and for such a period of time before that as you desire. The Court will permit

108 you to do that, but let's not go into the question of whether he has been cured or hasn't. It has no place in this case.

Mr. ROPE. Thank you, your Honor.

The COURT. Go ahead.

By Mr. ROPE:

Now, going back, then, to Everett Jenkins for just a moment, I direct your attention to the 10th day of January, 1951. Do you know whether at that time the informer, Everett Jenkins, was addicted to the use of narcotics?

A. I believe he was. That would be my opinion.

Q. Is that based upon observation of him?

A. Not upon my observations of having seen him actually take the drug, but the fact that he was associated with people in the drug business and was attempting to get drugs daily.

Q. Now, how many times in 10 or 12 years, would you just estimate. if you can't say with certainty, have you seen Everett Jenkins?

BLEED THROUGH— POOR COPY

A. If would really be difficult.

Q. All right, how many times in the last 3 or 4 years, then, since the first time you approached him?

A. Well, some months or weeks I drive through that district down there most every day, sometimes several times a day, and I have often saw him on the street. It would be difficult to say how often.

Q. Did you speak with him on any of these occasions?

A. If the occasion was so that I could say hello to him,
109 I spoke. If I didn't, I went on by.

Q. Just to greet him. Did you have any further conversation with him than just a hello?

A. Sometimes, yes.

Q. Were you continually all during that period of time attempting to induce Jenkins to act as an informer for the Government?

A. No.

Q. In other words, after the first time 3 or 4 years ago when you first approached him, you had not contacted him with reference to that until this date, is that right, the date charged in the indictment or just a day or two previous to that? Just answer whether you had or had not.

A. Will you please read it back, the question?

(Whereupon the last question was read by the reporter.)

A. Yes, I have received information from him various times.

By Mr. ROPE:

Q. Then you have spoken with him on occasions?

A. Yes.

Q. Have you ever worked actively with him?

A. Yes.

Q. As you say you did in this case?

A. No.

Q. You never have?

A. No.

Q. Now, the time that is charged in this case on the 9th of January 1951, then that was the first time you say you have worked actively with Jenkins, is that right?

A. Yes.

110 Q. And was that at your instance or his?

A. That was at my request, yes.

Q. At your request, but that time he was perfectly willing to go along, was he not?

A. Yes.

Q. I mean he was perfectly willing to give you information concerning the date, January 10th, is that right?

A. Well, to give me information?

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Q. Yes.

A. Well, I was there.

Q. Well, was he willing to deal with you on January 9th, is that right?

A. I asked him to do something for me and he agreed.

Q. That was the first time that he had ever been willing to work actively with you, is that right?

A. He possibly would, if I had asked him. That is the first time I ever asked him.

Q. Well, didn't you say that 3 or 4 years ago you asked him to work with you?

A. I said I talked with him about our business and I talked with him lots of times since, but actively taking a part in one of these transactions and maybe just talking to someone, is some different.

Q. Didn't you say that you had known him for 10 or 12 years now, and that the first time you had approached him with reference to his working for you as an informer was some 3 or 4
111 years ago? Wasn't that your testimony?

A. That was my testimony, but possibly you don't quite understand about the informer.

Q. Well, we will understand about the informer a little bit later. In the meantime I want to get your testimony straight.

A. Yes, all right.

Q. Now, 3 or 4 years ago he wasn't willing to work with you as an informer then?

A. He was furnishing me information then.

Mr. AULL. If the Court please, I want to object to that as being extremely remote. The witness hasn't even been given a chance.

The COURT. Yes, get it down somewhere near the time.

Mr. ROPE. If it please——

The COURT (interrupting). There is no need of going into all of this stuff.

Mr. ROPE. I think it is fair for the defendant to show the past association with this informer.

The COURT. Yes, you have gone into it. Let's get what you want. We are not going to be here all day. Let's get what you want. Ask your question, get an answer and then we will go ahead.

By Mr. ROPE:

Q. Now, you say that you have been a narcotics agent for twenty-two and a half years, is that right?

A. Yes.

112 The COURT. I am not cutting you off of that examination, if you want to pursue it, but ask it and get through with it. Get your answer and get on to something else.

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Mr. ROPE. All right, thank you, Your Honor.

By Mr. ROPE:

Q. Is it difficult for you to look at a person who is under the influence of drugs, and detect that?

A. It is very easy to be mistaken.

Q. What other conditions have you seen that simulate a drug coma or drug state?

A. Various types of illness.

Q. What, for example?

A. Liver conditions, and that sort of thing.

Q. That would be rather rare, wouldn't it?

Mr. AULL. If the Court please, I don't want to stop counsel but I fail to see where this has any bearing on the case.

The COURT. I don't know where he is going. He is just roaming all over the whole country, and I don't know just exactly where he is going, but if you are going into how a drug addiction affects people and what the appearance is——

Mr. ROPE. I don't intend to do that, Your Honor.

The COURT. Well, you are doing it. You asked him if he
113 could tell what the effect of it was. Now, if you get it down to these instances, I am not going to stop you, just go on. If you want to impeach this witness or this person any way you can, but let's get down to the facts about it.

By Mr. ROPE:

Q. Now, you say that you have known the defendant Sam Walder for about 2 years, is that right? Was that your testimony?

A. Yes.

Q. Now, do you know where Sam Walder was located in business?

A. Yes.

Q. Do you know that he had a tavern in Kansas City, Kansas?

A. I do.

Q. Do you know that he was actively engaged in that business on this date that is charged by the Government in the indictment, the 10th of January 1951?

A. I know his wife was actively engaged.

Q. Well, you know that he owned a tavern in Kansas, don't you, or at least insofar as you know operated one?

A. Yes, I know he and the wife had a tavern over there, or at least the wife had one.

Q. Now, this happened on the 10th day of January 1951, it is here charged. Do you remember what day of the week it was or whether it was a day of the week? A week day, I should say.

A. I couldn't tell you what day it was.

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Q. You don't remember what day it was?

A. No.

114 Q. Do you remember what time of the day it was?

A. Yes.

Q. You remember the date very vividly?

A. Well, I refreshed my memory from the memorandums that we prepared at the time. We have a number of these cases we work.

Q. Did you make a memorandum of the day of the week?

A. No.

Q. You failed to note that down?

A. Yes.

Q. Do you know whether it was on Saturday or Sunday or Monday? You don't have any idea at all?

A. I won't say as to what day of the week.

Q. Now, you know, as a matter of fact, Mr. Follmer, that the defendant in this case, Sam Walder, remained each night at his tavern till the early hours of the morning, do you not, before returning home?

A. No, I don't know that.

Q. You don't know that?

A. No.

Q. But you don't know that it isn't true, do you?

A. I have spent considerable time watching that tavern, sir, when they first opened, and he wasn't spending any time there then.

Q. When did it first open?

A. Well, the first I knew about it was in the—I don't remember exactly the month or anything, but I know it was during

115 the wintertime, it was cold when we were sitting over there.

Q. Did you remember the name of that tavern?

A. I can't recall, but I know exactly where it is.

Q. You spent a considerable time watching it, but you can't recall the name of it?

A. I don't recall the name of that tavern now.

Q. How much time would you say you spent watching it?

A. A number of different days and evenings.

Q. But you just can't recall the name?

A. I don't recall the name.

Q. So that you know for a fact that Mr. Walder worked until very late at night at the tavern, do you not?

Mr. AULL. If the Court please——

A. (Interrupting.) I always saw his wife working in there. I never saw him working there.

BLEED THROUGH- POOR COPY

The COURT. That is the fourth time you have asked him. Now, you have your answer, let's go on to something else.

Mr. ROPE. All right.

By Mr. ROPE:

Q. So that you say this instance of this transaction occurred at around 1 to 1:30 at night?

A. One to one-thirty in the morning, yes.

Q. One to one-thirty in the morning of the 10th?

A. Around 1:30 or 2 o'clock.

Q. You don't know what time Mr. Walder arrived home,
116 then, do you, or whether he had even been out?

A. I heard that.

Q. Well, I am asking you of your own knowledge.

A. The first I knew he was home we was——

Q. (Interrupting.) You don't have to look at Mr. Aull here to get the answer to that question, do you?

The COURT. There is no occasion for making that statement, Mr. Rope. Now, young man, you had better conduct yourself a little bit better. There was no occasion for making that statement. This is the first time you have been in court and the Court wants to go further than we do with an older lawyer, but there is no occasion for making that remark. Just keep yourself within the record and conduct yourself like a lawyer should conduct himself in the United States Court. This is your first time here. Now, don't get yourself in a position that you are going to be sorry for.

Mr. ROPE. I am sorry, Your Honor. I apologize for any conduct unbecoming an attorney. Will you read that question?

The COURT. You represent your client just as you feel you should, but do it within the bounds of practice of this court.

By Mr. ROPE:

Q. Just do you know of your own information?

A. We had been there earlier in the evening and sent
117 Jenkins in and he wasn't home then.

Q. Did you previously testify to that?

A. Sir?

Q. Did you testify earlier that you had been there earlier in the evening and he wasn't home?

A. I testified that we went to various places in the Negro district attempting to locate him and that was one of the places.

Q. His home?

A. Yes.

Q. It wasn't specifically stated before?

A. No, it was not.

Q. But now you say it was his home that you had been to?

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A. That is right.

Q. He wasn't home earlier?

A. No.

Q. You don't know what time he did arrive home?

A. No.

Q. Are you very certain about the time which you have testified to from the witness stand, 1 or 1:30?

A. Yes, because we noted that on the evidence.

Q. The time of day but not the day of the week?

A. Yes.

Q. Now, you didn't actually see any transaction take place at all on that date, did you?

A. No.

Q. You are relying now on what you say that Jenkins returned with, is that right?

A. Yes.

118 Q. You don't know for certain whether Jenkins, you stated previously—I will withdraw that. You stated previously that he entered that building, what was the name of that apartment?

A. The Carver Apartment.

Q. The Carver Apartment. You don't know of your own knowledge that he even went to Walder's apartment in that building?

A. I do not.

Q. Only by what he told you, isn't that right?

A. That is right.

Q. Now, isn't it a fact, Mr. Follmer, that if this transaction occurred on January 10, 1951, that as of that one transaction that you had sufficient evidence at that time, that there was sufficient evidence to make a charge of a narcotics violation against the defendant, Sam Walder?

A. There wouldn't have been sufficient evidence.

Q. That would not have been. In other words, then, if this count contained only the one count, Count I of the indictment, that would be insufficient in your opinion?

Mr. AULL. If the Court please, that is asking for a legal conclusion which is certainly no part of this witness' testimony.

Mr. ROPE. This is cross-examination, if it please the Court.

The COURT. It is cross-examination. I am going to let him go ahead here.

Mr. AULL. I didn't hear the last part.

119 The WITNESS. One transaction might fail to show commercialism, sir.

By Mr. ROPE:

Q. You say one transaction might fail to show commercialism?

BLEED THROUGH- POOR COPY

A. That is right.

Q. Although you say this procedure of search and removal of property from the informer and giving him money and sending him to the alleged seller of narcotics and a return by him as you have so stated with a narcotic, and his testimony in addition to yours to that effect is insufficient?

A. It would not show commercialism. It possibly would not.

Q. What is "commercialism"?

A. It is where a man makes money at selling narcotics, rather than doing some other addict that he feels sorry for a favor.

Q. Well, where you have what you believe to be the absolute evidence that there has been a transfer of a narcotic for money, doesn't that show commercialism?

The COURT. Well gentlemen, now, that is argumentative, the objection, if it were, would be sustained. That is a question of law, Mr. Rope. It is argumentative.

By Mr. ROPE:

Q. Do you ever place a charge against an individual, does your department ever place a charge against an individual based upon one transaction?

A. We have.

120 Q. You have?

A. Yes.

Q. Then one is sufficient, is it not, in the eyes of your department? I am not asking about the United States Attorney's office but merely your department.

A. We often proceed on one count, yes.

Q. It has been considered sufficient. The same circumstances as you relate in this case?

A. Very similar. I believe there are no two alike.

Q. Very similar. But when did you first meet Henly Taylor?

A. September, I believe '49—anyhow, it was in the fall of '49.

The COURT. Before we start on that we will take a few minutes recess.

(Whereupon, a short recess was had.)

The COURT. All right, proceed.

By Mr. ROPE:

Q. I believe you were asked when you first met the witness for the United States, Henly Taylor?

A. It was about 2 years ago, in the fall of '49, as I recall.

Q. Where did you first meet him?

A. At a house on Lydia Street, in the 1000 block.

Q. Was that during the course of a business transaction?

A. As I recall, Agent Witt, and possibly Hall, was along. We visited him out there and talked with him.

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Q. Pardon me?

A. It was his home. We talked with him.

121 Q. How many times has, to your recollection, has the witness, Henly Taylor, worked with you?

A. He has worked on a number of cases, possibly 12, 15.

Q. In the same manner that you say he worked with you here?

A. Yes.

Q. Do you know where Henly Taylor is employed?

A. He is a janitor in an apartment building.

Q. What apartment building is that?

A. The address is 2808 Independence Avenue.

Q. Does he live there now?

A. Yes.

Q. How long has he been at that employment as far as you know?

A. Since along in the fall sometime, I couldn't say exactly.

Q. Now, do you know of your own knowledge whether on April 11, 1951, Henly Taylor was a user of narcotics himself?

A. I believe he was.

Q. Did he give any outward indications of that?

A. Yes, he appeared to be.

Q. Now, the first time you met him, about 2 years ago, did he appear to be a narcotics addict then?

A. Yes.

Q. When I say "a user of narcotics," I mean an addict.

A. Yes.

Q. I want you to take that as meaning the same kind. Do you know what kind of narcotics he was using?

A. Heroin.

122 Q. Did you ever see him on occasions when he was, on many occasions, I should say, when he was obviously under the influence of heroin?

A. He wasn't sick and I would assume that he had—he was under the influence of it.

Q. Would you say there are separate stages of a narcotic addiction?

A. Well, there is not necessarily different stages, but there is an illness when you don't have it.

Q. That follows deep addiction, does it not?

A. Well, it follows withdrawal, follows any addiction.

Q. Then so far as you know, during all of your acquaintance, up until the date of April 11th, with the witness, Henly Taylor, he had never had the drug withdrawn from him?

A. Not to my knowledge.

Q. Because he didn't ever appear to be sick?

A. No.

BLEED THROUGH– POOR COPY

Q. Although he was frequently under the influence of a narcotic?

A. Well, he didn't appear to be sick. I assume that he was using it, yes.

Q. Do you know, that he ever received medical treatment for narcotic addiction?

A. I don't know that he did.

Q. You don't know that he was ever in an institution for treatment?

A. No.

123 Q. So far as you know up until the time of this trial, then, he is still a user of narcotics, is that right?

A. I understand that he is no longer a user and he doesn't appear to be.

Q. Do you know how he achieved the cure?

A. Oftentime they are able to cure themselves.

Q. They are able to cure themselves?

A. Yes.

Q. Voluntarily.

A. Yes.

Q. And deliberately?

A. Yes.

Q. That is of heroin addiction?

A. Yes.

Q. You don't know whether he has or has not?

A. Not to my own knowledge.

Q. How many times have you seen Henly Taylor since April 11th? I will say since April 12th? It is also alleged here that you had a transaction or were party to a transaction on April 12th. How many times have you seen him since then?

A. Oh, possibly anywhere from 50 to 150 times.

Q. Did he work with you on many of those occasions?

A. Yes.

Q. Then you presume that Henly Taylor knows lots of people wherein he is able to obtain access to narcotics, is that right?

Mr. AULL. I want to object to what he may presume.

The COURT. Overruled.

A. I presume that he is able.

By Mr. ROPE:

Q. Is that a fair presumption?

124 A. It would be, yes.

Q. Now on the date of April 11th, was that your first contact with Henly Taylor concerning this transaction charged in the indictment whereafter a charge was made against the defendant, Sam Walder?

A. Was that our first contact with reference to Sam Walder?

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Q. What did you say was the date of that contest, the 10th, was it not?

A. April 11th is the date of the transaction, and we had talked with him several days prior to that about Walder.

Q. Well, you didn't testify to that on your direct examination, did you?

A. It is not alleged in the indictment, sir.

Q. I didn't ask you that but merely whether you did testify to that?

A. No.

Q. You testified that you contacted him on the 10th with reference to Walder, isn't that right?

A. I contacted him on the 11th with reference to Walder.

Q. And you stated that at that time this transaction was commenced, that the routine search and giving of Government money and so forth was given to Henly Taylor, all that was done?

A. On the 11th and 12th.

Q. As usual. I am referring strictly to the 11th at the present time.

A. Yes.

125 Q. What kind of money did you give him?

A. United States currency, I don't know the denominations.

Q. You don't remember the denominations? How much did you say you gave him?

A. $20.00.

Q. How much heroin did you tell him to buy?

A. It was understood that he was going to get 10 capsules.

Q. Who was it understood between, did you understand it?

A. Yes.

Q. That was of your knowledge that he was to get capsules?

A. He told me he could purchase 10 capsules for $20.00.

Q. He told you he could purchase 10 capsules for $20.00?

A. Yes.

Q. He knew the prevailing market price of heroin, very well, is that right?

A. Yes, sir.

Q. Going back, Henly Taylor, was completely willing to work with you, isn't that right?

A. Yes.

Q. He was very willing. All these times Henly Taylor worked with you, you would always search him before he went out on the transaction, would you?

A. If we contemplated making a purchase of evidence, we did.

Q. Did that happen many times?

A. Yes, sir.

BLEED THROUGH– POOR COPY

Q. How many times was that, just to refresh the mind of the jury here? How many times?

A. How many times?

126 Q. Approximately?

A. Had we searched him?

Q. That these transactions were carried on with him?

A. We made about 15 cases, I imagine, about 3 or 4 buys to the case, that would be 50 or 60 times.

Q. In all of these times that you worked with him, did you ever find a narcotic on him when you searched him?

A. No, because he always knew he was going to meet us.

Q. So that you never did find any narcotics in his possession?

A. No.

Q. But he did at times appear to be under the influence when you saw him?

A. Yes.

Q. How about on any of these occasions when he worked for you?

A. Those are the occasions that I am speaking of.

Q. That he appeared to be under the influence of narcotics?

A. Yes, he appeared to be under the influence of narcotics.

Q. But it just so happened that he didn't have any on him when you searched him?

A. We always met him by appointment and he didn't have any when he met us.

Q. He was able to exercise perfect control over his desires, so far as you knew, is that so, was that the case?

A. His desires?

Q. Yes, his desires for narcotics so that he was never caught by you—I will not use that term. So that you never found him on all of these occasions with a narcotic in his pos-

127 session, but only under the influence?

A. I never found him with any in his possession.

Q. Did you consider that a man under the influence of a narcotic was able to know the nature of what he was doing?

A. Surely.

Q. Able to know every move he made?

A. Surely.

Q. Everything that was done?

A. Yes.

Q. Perfectly coherent all the time?

A. Yes.

Q. Perfectly?

A. Well, perfectly?

Q. Yes, perfectly.

A. I would say he was reasonably normal.

BLURRED COPY

Q. How did he deviate from normal?

A. I couldn't differentiate.

Q. How did he act?

A. I don't know that he did act. I say—you are talking about men, you said "men"?

Q. I am referring to Henly Taylor.

A. Yes.

Q. On these occasions when he was obviously under the influence of a narcotic, you say he was reasonably normal?

A. I am talking about drug addicts in general when I say that.

Q. Let's confine our discussion here just to Henly Taylor.

128 A. He appeared to be normal.

Q. He appeared to be normal?

A. Addicts are normal when they have drugs.

Q. Didn't you just testify that he appeared to be under the influence of narcotics on many occasions? Wasn't that just your direct testimony on cross examination?

A. My testimony was that he wasn't ill when we met him and assumed that he was under the influence of drugs.

Q. You said his appearance, did you not, gave that indication?

A. He appeared to be a user, yes.

Q. And didn't you just say that on those occasions when you saw him he was reasonable normal?

A. He was normal, as far as I could see.

Q. To you reasonably normal and normal are identical, is that right?

A. Yes.

Q. There is no difference. There is no deviation?

A. I wouldn't be able to differentiate between normality of a person under the influence of drugs and one who was not.

Q. How many years did you say that you have been in this business?

A. Twenty-two and a half years.

Q. Twenty-two and a half years and you want to tell this Court and this jury now that you wouldn't be able to differentiate between the behavior of a person under the influence of narcotics and one not under the influence of narcotics, is that your testimony?

129 A. That is right, if he had the drugs and was not ill.

Q. So that the way that you knew he was under the influence then was because he was not ill. He was perfectly normal?

A. I understood he was an addict, and if he wasn't ill, I assumed he had drugs.

Q. So that when his behavior was reasonably normal as you have testified, then you knew that he was under the influence of narcotics or had reason to believe that?

BLEED THROUGH- POOR COPY

A. I believe he was, yes.

Q. Was there ever any difficulty with his speech on these occasions?

A. I didn't notice any.

Q. Well, has it ever been your experience that one under the influence of a narcotic has any difficulty with his speech at all?

A. Not at all?

Q. Not at all. What are some of the manifestations of the influence of heroin on a person?

A. In appearance they are usually emaciated looking, and the heroin and any derivative of opium causes, dries up the normal, well, the gastric juices and other fluids in the body. Consequently, their food doesn't digest very well, and as a result of that they soon become sort of emaciated looking, they don't have any appetite. Most of them live on sweet things, rolls and candy, and that sort of thing, and they just look like anyone else that is ill.

130 Q. What are some of the other manifestations, is that the entire description?

A. Well, where an addiction is most noticeable is where they are suffering from withdrawal symptoms, where they are sick from lack of drugs, and in those cases they are just like anyone else that is very sick.

Q. That was not Henly Taylor's condition during this period of time in which you did business with him?

A. He wasn't ill.

Q. Was he emaciated?

A. He has gained considerable weight since then.

Q. I am not referring to since then, but up until April 12th.

A. Well, he was slender.

Q. He definitely gave the appearance of one under the influence of narcotics according to your description?

A. Yes, and I had every reason to believe he was an addict.

The COURT. Now then, we have got him as an addict, let's get on to something else. We know he is an addict. It is admitted he is an addict.

Mr. ROPE. About two more questions.

The COURT. All right, but let's limit it.

By Mr. ROPE:

Q. Did you ever discuss with Henly Taylor his addiction to the use of narcotics?

A. I think I possibly have mentioned it to him, asked him, maybe, how much he was using, or something of that nature.

131 Q. That is about the extent of it, is that right?

A. Yes.

Q. Did he ever discuss it with you?

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A. Yes, I believe he has.

Q. Do you recall anything he said to you?

Mr. AULL. If the Court please, that is hearsay testimony.

The COURT. The objections is sustained.

A. Possibly, maybe the difficulty——

Mr. AULL (interrupting). The objection was sustained.

The WITNESS. I am sorry.

By Mr. ROPE:

Q. Did you ever hear him say he wanted to give up the use of drugs?

Mr. AULL. If the Court please——

The COURT. The objection sustained. He has already answered the question. It doesn't make any difference whether he wanted to give it up or whether he didn't.

By Mr. ROPE:

Q. Now, on this occasion, on April 11th—by the way, going back just a little bit, you say you have known Sam Walder for a long time. Isn't it a fact that Sam Walder was injured in an automobile accident sometime in March of 1951?

A. I heard he was in an accident.

Mr. AULL. If the Court please, I object to that answer of the witness as hearsay testimony and move it be stricken.

132 The COURT. Yes, the objection is sustained.

By Mr. ROPE:

Q. Well, now you never saw Sam Walder until the day alleged here, April 11, 1951, I will say you never saw Sam Walder between March 8, 1951, and April 11, 1951, did you, or did you not?

A. March 8th and April 11th?

Q. Yes. You had heard about him?

A. I don't recall that I did see him.

Q. You don't recall that you did see him during that time?

A. No.

Q. Then, if during that time Sam Walder had a foot in a cast and was walking on crutches, you wouldn't know whether or not that was the case, would you?

Mr. AULL. If the Court please, that is an improper question.

The COURT. The objection is sustained unless this witness knows of his own knowledge. You are asking him for some speculation.

Mr. ROPE. If it please the Court, may I rephrase my question?

By Mr. ROPE:

Q. Then, if you do not recollect ever having seen Sam Walder between March 8th and April 11, 1951, you never saw him during that period yourself with his foot in a cast and walking on crutches, did you?

BLEED THROUGH– POOR COPY

A. It seems that I did see him on crutches but I wouldn't
133 be able to remember just when it was.

Q. You did see him on crutches. Now, you recollect that you did see him, is that right?

A. Yes.

Q. Was it sometime around the time of this period that this transaction is alleged?

A. I wouldn't be able to say whether it was during the same months of the transactions or prior.

Q. But you do remember that?

A. Yes, I think I do.

Q. What did Sam Walder look like? You have testified on your direct examination that you saw him, I believe, on April 11th, is that right?

A. On April 11th?

Q. On April 11th?

A. Yes.

Q. And what did he look like at that time? Didn't you testify that he walked across the street some place?

A. Yes.

Q. Stood there?

A. Yes.

Q. Describe his appearance as well as you remember it.

A. As I recall, he had on a tan Camel's hair coat and a brown hat. Other than that I wouldn't be able to say.

Q. How far away was he?

A. Possibly 300 feet, 250 or 300 feet.

Q. Then, you couldn't be absolutely certain that the man you saw was even Sam Walder, could you?

A. I know Sam well enough that I would know him.

134 Q. He had on a hat and topcoat?

A. Yes.

Q. Did the man you saw walking on crutches——

A. (Interrupting.) He wasn't on any crutches then.

Q. That man wasn't on any crutches?

A. No.

Q. But you are confident now on this witness stand that that man 300 feet away was Sam Walder?

A. Yes.

Q. What kind of day was it, do you remember?

A. It was, as best I can recall, it was cloudy, but—well, the sun wasn't shining.

Q. As a matter of fact, you were relying on the informer, Henly Taylor, to supply you in this case with what you needed and not upon your observation, were you not?

A. Well, I was there to see whatever, observe whatever I could.

BLURRED COPY

Q. Yes, you were there for the purpose of searching Henly Taylor and giving Henly Taylor money, and then searching and removing whatever he had when he returned, wasn't that your primary purpose?

A. That and to observe. I didn't make the search. Agent Witt made the search.

Q. You were there when it was done, the search that is alleged here?

A. Yes.

Q. But you were relying upon the circumstance that this was done as you say, and that the informer, Henly Taylor, returned with the narcotics as you say, isn't that right? That is part of the evidence in this case?

135 A. That is what transpired in this instance.

Q. Your identification of Sam Walder in this case is not the primary element at all, is it?

Mr. AULL. If the Court please, I object to what the primary element is. That is a question for the jury.

The COURT. The objection is sustained.

By Mr. ROPE:

Q. All right, now, I will direct your attention to April 12, 1951. Who were you with then, Agents Shattuck and Witt?

A. On that occasion I was with Agent—I was with Agent Witt and Shattuck and Hall.

Q. Didn't you just testify on your previous examination that Agent Hall wasn't with you on that third occasion?

A. He wasn't with us on the fourth occasion.

Q. Who was with you on the fourth occasion?

A. Shattuck and Witt.

Q. And you say that on the third occasion they were all with you?

A. Yes.

Q. One thing, going back to the second occasion just a moment, everything that is supposed to have transpired here transpired inside the Green Duck Tavern, isn't that right?

A. No. That is where he went, to the Green Duck Tavern.

Q. Who went to the Green Duck Tavern?

A. Taylor.

Q. Is that the only instance upon which he was to meet

136 a seller of narcotics on that occasion, on that date?

A. Is that the first instance?

Q. Is that the only instance when he went into the Green Duck?

A. No, he was there on the preceding day.

Q. I am talking about April 12th, on that occasion.

A. Yes, I understand.

BLEED THROUGH— POOR COPY

Q. The 12th of April. I am sorry, I mean the 11th of April. I am not referring to the preceding day at all.

A. You are talking about the 11th?

Q. The 11th, yes, that is where he told you the transaction was to take place, isn't that right?

A. That was where he was to meet Walder, yes.

Q. And that is what he told you?

A. Originally.

Q. You didn't know whether it would be Walder he would meet or not?

A. That was as a result of the first phone call.

Q. You didn't know whether it would be Walder or whether he would actually meet anybody, did you, of your own knowledge?

A. On that occasion Agent Witt watched him dial the telephone.

Q. I am not referring to what Agent Witt might have seen, but what you know of your won knowledge.

A. Yes.

Q. You didn't know who he was to meet only by virtue of what he told you, isn't that right?

A. That is right

137 Q. You don't know to this date whether or not when he went inside of the Green Duck Tavern that he met Sam Walder in there?

A. He didn't meet Sam in the Green Duck.

Q. Where do you say he met Sam?

A. On the 11th?

Q. On the 11th, the second occasion.

A. He met him at the Santa Fe Tavern.

Q. At the Santa Fe Tavern. You testified on your direct examination, did you not, that he went into the Green Duck Tavern?

A. First into the Green Duck.

Q. Did you mention the Santa Fe Tavern?

A. Yes, I did, I believe.

Q. As to the second occasion?

A. Yes.

Q. Well, you went to the Green Duck Tavern with him, accompanied him there?

A. We accompanied him very close to the Green Duck and followed him until he went in.

Q. How close to the Green Duck?

A. Well, he got out at 27th and Montgall. We followed him around the corner. He went into the tavern. We went up Prospect Avenue made a reverse turn and parked at Prospect and Lockridge, which is the first street south of there.

Q. He went in and then what happened?

A. Or north of the intersection.

BLURRED COPY

Q. Then what happened?

138 A. That is where we waited until we saw him approach from the south—I mean the north, of the west side of Prospect Avenue.

Q. Let me interrupt you just a moment. You saw the man you have described as Sam Walder?

A. Yes.

Q. With a hat and topcoat, isn't that right?

A. Yes. And we also saw Taylor come out of the Santa Fe Tavern and stand there for a moment and look across the street in the direction of Walder, and Walder apparently was looking towards Taylor. Then Walder crossed the street and followed Taylor into the tavern.

Q. Now, this was the time you were about 300 feet away, is that right?

A. Two hundred fifty or three hundred.

Q. Three hundred feet is what you testified to.

A. I said 250 to 300.

Q. Now, from the time Henly Taylor went into the Green Duck Tavern until the time he came back to the vicinity of the Santa Fe Tavern——

A. Yes.

Q. (Continuing.) He was never back under your surveillance at all, was he?

A. Yes, he was.

Q. Well, you didn't make another search of him?

A. Yes, we did.

Q. Well, you didn't testify to that before, did you?

A. I did.

Q. You made your one search of Henly Taylor the first time you let him out of the car?

139 A. No, I testified we again searched him when he left the Green Duck, came across the street and got into the automobile which was parked about the middle of the block, between Montgall and Prospect, on 26th Street, and there Agent Witt again searched him.

Q. Was that your testimony before?

A. That was my testimony before.

Q. How far is the Green Duck from the Santa Fe?

A. It is one block from 26th to 27th, and then about 4 doors, 4 store buildings.

Q. Did you drive Henly Taylor down to the Santa Fe?

A. We drove him to 27th and Montgall, where we again let him out of the car.

Q. You drove him to 27th and Montgall where you again let him out of the car. Was that within sight of the Santa Fe Tavern?

BLEED THROUGH- POOR COPY

A. It was not.
Q. It wasn't within sight of it?
A. No.
Q. Did you follow him?
A. We did.
Q. In what, in the car?
A. In the car.
Q. You followed him in the car up to what point?
A. Up until he went in the tavern, on Prospect Avenue there,
2715.
Q. Which tavern is that?
A. The Santa Fe.
Q. That is the Santa Fe?
A. Yes.
Q. You followed him up and he went in the tavern?
140 A. He went in the tavern.
Q. Then what did he do?
A. About 15 minutes later he came out and stood in front for a moment at the same time Walder was standing across the street, and Walder walked over toward Taylor and Taylor went on in the tavern, re-entered the tavern. Walder followed him into the tavern and about 10 minutes later Taylor came out of the tavern alone and he went back around the corner to 27th and Montgall where we picked him up.
Q. The man that you saw follow Taylor into the tavern, the man that you say followed him in, was a man in a light topcoat you said?
A. As I remember he had a tan Camel's hair topcoat and a brown hat.
Q. Were you on the opposite side of the street from him?
A. We were on the opposite from him. We were on the east side of the street, which would have been the opposite side from where he was standing originally from the side he came up.
Q. In other words, you were right in front of the Santa Fe Tavern almost?
A. No, we were possibly 250 or 300 feet down the street from the Santa Fe Tavern.
Q. And you saw all this. Just one more thing about this, as to Taylor's presence in the Santa Fe Tavern, you have no idea what transpired in there of your own knowledge?
141 A. No.
Q. You don't know what took place?
A. No.
Q. You don't.
The COURT. Now, he has testified. Go ahead. He has testified he didn't see and wasn't there. How could he have known, Mr.

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Rope? Let's be frank. How could he see? Of course, he doesn't know.

Mr. ROPE. Thank you, your Honor.

The COURT. He said it about 4 times, anyhow.

By Mr. ROPE:

Q. Now, directing your attention back to April 12th again, when you say you with officers—who is it, now, on the third occasion?

A. April 12th, the third occasion, Witt, Shattuck and Hall.

Q. And at the transaction that you described therein took place around 7:30 or 8 o'clock at night, is that right?

A. The transaction itself was around 9:30. We met Taylor around 7:30 or 8 o'clock.

Q. Were you present when they met?

A. When who met?

Q. Who did you say met Taylor?

A. I said it was around 7:30 or 8 o'clock when we met Taylor.

Q. You met Taylor?

A. Yes.

Q. And you again went through this procedure you described with him?

A. Yes.

Q. Where did you take him from where you met him, you took him in your car?

A. Yes.

142 Q. To what point?

A. To the Green Duck Tavern. That is, to the vicinity of 27th and Montgall.

Q. Then what happened?

A. Or 26th and Montgall, I am sorry.

Q. Then what happened?

A. That is where he got out of the automobile and went to.

Q. Referring to April 12th occasion?

A. April 12th, the third occasion, yes, went to the Green Duck Tavern.

Q. All right. Did you let him off there?

A. Yes, we let him out of the car.

Q. Right in front of it?

A. No, at 26th and Montgall.

Q. How far was that from the Green Duck Tavern?

A. One block.

Q. That was the same place you had let him off the previous day or he had been in the previous day, wasn't it?

A. Yes.

Q. Then what happened?

BLEED THROUGH— POOR COPY

A. He came out a short time later and said he received a telephone call.

Q. He told you he received a telephone call?

A. Yes.

Q. All right.

143 A. We went to 18th and Campbell where we—in the meantime, he was again searched. We went to 18th and Campbell and I think Agent Witt gave him some change to buy some beer in the tavern so it would look reasonable for him to sit down in there.

Q. What is at 18th and Campbell?

A. Just the intersection.

Q. Where did he go from there?

A. To 919 East 18th.

Q. What is there?

A. Wilson's Tavern.

Q. 919 East 18th. Did you take him over there?

A. I saw him go in.

Q. What is that?

A. I saw him go in.

Q. Where were you?

A. I was on 18th Street.

Q. How far from the tavern?

A. Oh, we were moving around there, I expect when I saw him go in, I maybe was a couple of hundred feet.

Q. You estimate that you were a couple of hundred feet from there?

A. Yes.

Q. It would have been unwise to get any closer, would it?

A. It probably would.

Mr. AULL. I object.

The COURT. The objection is sustained. That is argumentative.

144 By Mr. ROPE:

Q. Now, what did you do, did you sit in your car?

A. I believe I was in the car most of the time. I might have been out once.

Q. How far did you go from the car?

A. Not too far, went across the street.

Q. Have you been down on 18th Street very much, very often, at that hour of the night?

A. I have been down there a number of nights.

A. Are you well known down there?

A. Well, I am, yes.

Q. People down there know you are an agent for the Narcotics Bureau, do they?

BLURRED COPY

A. Yes, they do.

Q. I mean it is common for you to be in that area at nights?

A. Well, yes, I am often down there.

Q. All right, and you were 200 feet away from Wilson's Tavern when you say you saw Henly Taylor go in there?

A. Yes.

Q. Then what happened?

A. Well, he was in there a short time and came out.

Q. Then what happened?

A. He met us again at 18th and Campbell.

Q. And you searched him?

A. Searched him and prior to that he had turned over to Agent Witt the 10 capsules of heroin.

145 Q. Now, in all, you have related to me in detail everything that happened on the 12th of April, isn't that right?

A. Yes.

Q. Pretty much in detail?

A. Yes.

Q. You haven't mentioned Sam Walder on the 12th of April at all? You didn't see him on that occasion?

A. I didn't see Sam that day.

Q. I asked you everything that happened and you didn't mention seeing Sam Walder.

The COURT. You ask him the questions if you want the answers.

By Mr. ROPE:

Q. When did you see Sam Walder on the 12th of April?

A. I didn't see Sam.

Q. You didn't see him on the 12th of April?

A. No.

Q. At all?

A. I didn't see him.

Q. At any time?

A. No.

Q. So that when Henly Taylor went into Wilson's Tavern on 18th Street, you don't know who he met there at all, or if he met anyone?

A. No.

Q. You know nothing about that, that is obvious, because you were out on the street 200 feet away. You didn't even see anyone that looked like Sam Walder around there?

A. I didn't see Sam out on the street there.

146 Q. Well, you don't know that he was inside? You have no way of knowing, do you?

A. No, I don't know.

The COURT. Let's stop with that. You have got the answer, let's go on.

BLEED THROUGH- POOR COPY

By Mr. Rope:

Q. Now, after these occasions of April 11th and April 12th, which you have referred to, and which you state that there were narcotics transactions, after the transaction on April 11th, as alleged, you had sufficient evidence then to make a charge of a narcotics violation against this man, did you not, if he was the man you say?

A. Yes.

Q. You allege now that you have two violations against him, isn't that right?

A. Are we on the second violation now or——

Q. (Interrupting.) We are on the second at the moment, after the second one, then you have what you have described as two violations, isn't that right?

A. Yes, sir.

Q. You had sufficient evidence to make an arrest then, didn't you?

A. Yes.

Q. You have the authority to do that, certainly, do you not?

A. We have a supervisor we confer with before we make arrests.

Q. Did you confer with your supervisor on this occasion?

A. We hadn't conferred with him regard an arrest yet.

Q. And he had advised you not to make an arrest, is that right?

147 A. I said we had not conferred with him regarding an arrest, no, neither had we conferred with the United States Attorney's Office.

Q. Any reason why you waited between January 10th and April 11th without having any conference with reference to arresting this man?

A. The only reason was we thought we would like to have more evidence.

Q. That you would like to have more evidence?

A. Yes.

Q. That what you had was insufficient?

Mr. Aull. If the Court please, that is most——

The Court. The Court has to make a statement about this. If you are anxious, the Court will make you—I don't want to injure you or your client, but if you persist, the Court will have to make a statement if you are going into it. The Court passes on the law in this case. That is about sufficiency of the evidence, assuming it is a fact, the Court will determine whether or not it is a violation of the law. If the facts exist, the Court will determine whether or not certain facts constitute a violation of the law. The Court doesn't pass on the facts but only the law. You have gone into this question of whether or not certain things would be sufficient

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evidence. I have refrained from making any statement
148 about it. But if you persist in going into it, I am going to have to do it. Go ahead.

You can ask him why they didn't make the arrest. You have a perfect right to do that, to get the reasons for it, but the rest of it is a question of law.

Mr. ROPE. Well, may I ask is it the Court's directive then, in order that I may not inquire further about that point?

The COURT. No, now, the Court is going to make this statement, that the sale of narcotics without complying with the law is a violation of the law, whether it be one time or whether it be 50 times, it is a violation of the law. The Court doesn't presume to say whether the sale was made or whether it wasn't, but the Court says if the sale was made, the agent was wrong in his statement. The Court states that. He said not with respect to the first buy. If he sold narcotics to the agent as the testimony shows he did, then he would be guilty of violating the law, if he did it without a written order.

Now, that is the law. There isn't any question about that when the agent said there wasn't sufficient, he was wrong in his legal conclusions, that it is a violation of the law, whoever does it, whether it is for the purpose of giving it to a friend or an enemy,
it is a violation of the law, and the Court, of course, will so
149 state to the jury when the time comes in the charge.

Mr. ROPE. Well, if it please the Court, we were offering to prove——

The COURT. You can find out why they didn't make the arrest.

Mr. ROPE. We were offering to prove by this line of testimony, Your Honor, that these agents are those who are engaged in gathering evidence for the Narcotics Bureau and that they were not satisfied with the quality of evidence which they had.

The COURT. That is not for this jury. You can find out why they didn't arrest him, if you want to do that, I think you can do that. I don't think it makes any difference as to the guilt or innocence of the defendant. If he sold it, he is guilty, and if he didn't, he isn't. It makes no difference whether they arrested him at that time or later, as long as it is within the statute of limitations.

By Mr. ROPE:

Q. Well, you did not, of course, make any arrest on January 10th or thereafter?

A. We didn't make any on January 10th.

Q. We haven't reached the point yet where any arrest was made?

A. No.

Q. You want to state to the Court and jury now, or state to them why no arrest was made then?

BLEED THROUGH— POOR COPY

A. State why no arrest was made?

150 Q. Yes, why no arrest was made.

A. Usually we confer with the United States Attorney's office, and our supervisor, and we hadn't yet conferred with them as to the amount of evidence we needed and for that reason we did not make an arrest.

Q. Well, now, if as you charge, Mr. Walder was engaged in the sale of narcotics, in your opinion would he not have been very apt to have either escaped jurisdiction or otherwise sold narcotics to many other persons during that interval?

Mr. AULL. We object to that.

The COURT. The objection is sustained.

By Mr. ROPE:

Q. Well, you have made, these charges have been made, this evidence brought into this court because it is here charged that Mr. Walder was engaged in a traffic on these occasions of narcotics, is that right?

A. Yes.

Q. But you failed to confer with your superiors in your department about this case between, at least, January 10th and April 11th, during all of those months, isn't that right?

A. I don't recall that I did confer with them. I know I didn't confer with the United States Attorney's office.

Q. Is that customary to wait that long to confer about these cases?

Mr. AULL. If the Court please, I see where this has no bearing whatever. I am going to make my objection to that line of questions.

151 The COURT. Well, the objection is overruled, why he didn't make the arrest, or why he didn't make any arrest.

A. We submit our written reports and they all go to the supervisor, and if he has anything to say regarding the case he usually calls on us.

By Mr. ROPE:

Q. Well, this is considered a serious and dangerous offense, is it not?

A. All narcotic violations are serious and dangerous.

Q. Then isn't the object to grab the man at the first opportunity after the commission of an offense before he has the opportunity to commit any more?

Mr. AULL. If the Court please, I am objecting to that, as to what the policy is as having no bearing here.

The COURT. The objection is sustained.

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By Mr. ROPE:

Q. Well, may I change the form of that question? Do you not usually endeavor to make an arrest at the earliest possible opportunity after you find a violation?

A. Yes.

Q. You do. Now, directing your attention to the occasion charged here on May 8th, of 1951, you again picked up the witness, that party whom you have stated will appear as a witness, Henly Taylor?

A. Yes.

Q. And where did you meet him then?

A. Where did we meet him?

152 Q. Yes.

A. 10th and Lydia.

Q. Did you tell him in advance what your objective was?

A. We had talked with him prior to that, yes.

Q. Where did you meet him at 10th and Lydia?

A. On the northwest corner.

Q. That was on May 8th. Do you remember what day of the week that was?

A. No, I don't.

Q. You met him on the northwest corner of 10th and Lydia. Now, where did you go after you met him?

A. To the drug store at 8th and Woodland.

Q. And what did you do there?

A. Taylor went inside to make a telephone call.

Q. Well, he went inside. You don't know that he went in to make a telephone call, do you?

A. No.

Q. You didn't see him make a telephone call?

A. No.

Q. Did you go to the drug store with him?

A. No.

Q. Then what happened?

A. He came out of the drug store and we drove to 26th and Montgall.

Q. What did you do at 26th and Montgall?

A. Taylor was searched, furnished with $50.00 of Government funds, then got out of the car and walked to the Carver Apartments at 2620 Prospect.

Q. How far was that?

153 A. A block west and 3 or 4 doors south on the west side of the street.

Q. Did you follow him there?

A. We did.

Q. How close did you come to 2620 Prospect?

BLEED THROUGH— POOR COPY

A. Passed right in front of it.
Q. Did you stop?
A. Turned around.
Q. Where did you stop your car?
A. We parked on the east side of Prospect, just north of 27th, I would say, probably 100 feet from the corner.
Q. And then what happened?
A. Well, Taylor had already gone in, and——
Q. He had already gone in?
A. Yes.
Q. How do you know he went in? Did you see him?
A. I saw him go in.
Q. I just want to keep it straight.
A. He was in there for 30 or 40 minutes.
Q. For 30 or 40 minutes?
A. Yes, and came out.
Q. And he came out?
A. And walked down to the corner of 26th and Prospect and then over to Montgall where we picked him up again.
Q. Then you searched him and you say you found these narcotics?
A. We didn't search him and find them, he gave them to Mr. Witt——
Q. You don't know where he was in that building of your
154 own knowledge?
A. I wasn't in the building.
Q. You saw him go in and did you see him come out?
A. Saw him come out.
Q. You don't know any more about it than that?
A. No.
Q. What time of the day did this take place?
A. This was early in the afternoon.
Q. Now, on your direct examination you related all these defails previously, I believe, did you not?
A. Yes.
Q. You met him at 8th and went in the drug store and all these other details where you parked your car?
A. Yes.
Q. But you don't remember the time of the day?
A. I don't.
Q. You had no recollection whatsoever of it at that time, did you?
A. I had a lot of dates and times in my mind and I was confused.
Q. Well, you are not confused about any of these details at all?
A. I just wasn't certain as to the time.

BLURRED COPY

Q. Is that what you stated on your direct examination, that you weren't certain or you just couldn't answer the question?

155 A. I just didn't answer it.

Q. You just did not because you had no recollection of the time of the day?

A. I couldn't remember the time of the day but I knew it was early in the afternoon.

Q. That is one detail that you omitted?

A. That is right, I have to refresh my memory from case reports, because there are dozens of these cases we are working here out of town.

Q. Pardon me, go ahead.

A. Out of town.

Mr. ROPE. Well, we move all that be stricken as not responsive.

The COURT. Overruled.

By Mr. ROPE:

Q. You didn't have any difficulty whatsoever on your previous examination stating the exact time of the day from 15 to 30 minutes as to the time a transaction took place, the first or the second or the third, at all, did you?

A. No, I refreshed my memory this morning.

Q. But you were unable entirely to recollect even approximately what time of the day this last alleged transaction——

A. (Interrupting.) I just didn't recall, and I didn't answer.

The COURT. That is three times that he has answered. Let's see if we can't get on to something else.

Mr. ROPE. I think that is all.

156 The WITNESS. Thank you.

The COURT. It is practically adjournment time, ladies and gentlemen of the jury. Please do not discuss the case among yourselves or with any other person. The Court will recess until 1:30. Let's come back this afternoon.

Thereupon, the court stood at recess until 1:30 o'clock p. m. of the same day, to wit, Tuesday, January 29, 1952.

157 In United States District Court

TRANSCRIPT OF PROCEEDINGS FILED AUGUST 26, 1952

AFTERNOON SESSION, TUESDAY, JANUARY 29, 1952

Pursuant to adjournment as aforesaid, at 1:30 o'clock p. m. of the same day, to-wit, Tuesday, January 29, 1952, came again the same parties, present and presiding as before, and the trial continued as follows:

BLEED THROUGH— POOR COPY

The Court. Proceed, gentlemen.

Everett Jenkins, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Aull:

Q. State your full name, please.
A. Everett Jenkins.
Q. How old are you?
A. Thirty-five.
Q. Now, do you know the defendant, Sam Walder?
A. Yes.
Q. Who sits here at the counsel table?
A. I do.
Q. Did you have occasion to make a purchase of narcotic drugs from him on the 10th of January?
Mr. Rope. Just a moment, if it please the Court, we object to that as being completely leading and suggestive and improper.
The Court. Overruled.
A. I did.

By Mr. Aull:

Q. 1951? That is a year ago. Now, prior to that time
158 were you contacted, state whether or not you were contacted by any of the agents of the Narcotics Bureau here in Kansas City.
A. I didn't understand you.
Q. Prior to January 10th did any of the agents of the Narcotics Bureau here in Kansas City talk to you about that?
A. About the buying?
Q. Yes.
A. Yes, sir.
Q. Do you recall who it was?
A. Yes, sir.
Q. Who was it?
A. Agent Follmer and Agent Witt and Agent Hall.
Q. Is this one of them right here?
A. Yes, sir.
Q. And the man who testified this morning, he was one of them?
A. Yes.
Q. Now, directing your attention to January 10th a year ago, 1951, on the evening of the 9th, which would be about 8 o'clock in the evening, were you with these officers at that time?
A. Yes, sir.
Mr. Rope. May it please the Court, just a moment. We again object to that as leading this witness. He has been doing it continually, Your Honor.

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The COURT. Objection overruled. It is a mere formal matter. It is getting down to the real facts. Why beat about the barn to get down to something that is not important? Go ahead. Don't lead your witness.

By Mr. AULL:

Q. Where was it that you met them?

159 A. At 18th and Paseo.

Q. What happened when you met these narcotic officers?

A. Well, they gave me, told me could I see and get some heroin from——

Mr. ROPE (interrupting). If it please the Court, we object to what the narcotics officers told him as being hearsay, not admissible in this case.

The COURT. Well, the objection is overruled.

By Mr. AULL:

Q. What was done then?

A. Well, they told me to see could I find him.

Q. What did you tell them?

A. Well, I went and looked. I told them I would.

Q. Tell this jury where you looked for him.

A. Well, we went to several of the night spots, different places.

Mr. ROPE. Just a moment. If it please the Court, it hasn't been established here except by intimation as to who this witness was looking for at all.

Mr. AULL. He said he was looking for Sam Walder.

The COURT. Overruled. If there is any question about it, find out who he was looking for.

By Mr. AULL:

Q. Go ahead. Where did you look?

A. We went.

The COURT. Find out. For whom were you looking?

A. I was looking for Sam Walder and we went to differ-

160 ent night clubs and everywhere until about, oh, we had looked until about 1:30. We went out on 18th and Paseo at the Blue Room and I was informed that he was at home and——

Mr. ROPE (interrupting). May it please the Court, we object to what he was informed as being hearsay.

The COURT. Overruled.

By Mr. AULL:

Q. Then where did you go?

A. Then we went to his house.

Q. Do you know where that is?

A. Between 26th and 27th on Prospect.

Q. Is that an apartment house?

BLEED THROUGH— POOR COPY

A. An apartment house.

Q. How did you do down there?

A. We went down, the agents, we were in a car and they took me on 26th between Prospect and Wabash and they searched me and then they gave me $10.00.

Mr. ROPE. I object to that as not being responsive to the question.

Mr. AULL. It is right in line with what he said.

The COURT. Overruled.

Mr. ROPE. That wasn't the question.

The COURT. Go ahead and answer the question.

By Mr. AULL:

Q. Do you remember who it was that searched you?

A. Yes, sir.

Q. Do you see the man in the courtroom?

A. Yes, sir.

Q. Where is he?

A. Right there [indicating].

161 Q. This man here?

A. Yes, sir.

Q. You are referring to Mr.——

A. Witt.

Q. Referring to Mr. Witt, is that it?

A. Yes, sir.

Q. How did they search you? What did they do?

A. Well, he got me and looked all through my pockets, and in my tie, and took off my shoes and socks.

Q. How about your belt?

A. They looked all over. I had to take off my belt.

Q. How about your billfold?

A. Yes, sir.

Q. At that time did you have any narcotic drugs on you?

A. No, sir.

Q. You have testified they gave you some money. How much money did they give you?

A. $10.00.

Q. What did you do after that search and after you had gotten the $10.00?

A. Well, after they searched me they told me, they gave me the money then and told me, you know, not to get back in the car, to go ahead on, and I went on up to the house.

Q. And how did you go up there?

A. I walked.

Q. Walked up there?

A. Yes.

Q. I believe you testified it was about 1:30 in the morning?

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A. Yes, sir, it was somewhere along there.

Mr. ROPE. If it please the Court, I move the last statement of the United States Attorney be stricken as I don't believe
162 there was any testimony as to the time from this witness as yet.

Mr. AULL. This witness, in my recollection, testified as to what time it was.

The COURT. Overruled. He testified it was about 1:30. Go on.

A. And after I went up there, well, he had to leave to get it.

By Mr. AULL:

Q. Where does he live in that house?

A. He lives in apartment 3, second floor.

Q. That is on the second floor?

A. Yes.

Q. You say he said he had to leave to get it?

A. Yes, sir.

Q. What did he tell you?

A. He said, well, he had to go to a stash.

Q. Then what happened?

A. Then he left, him and the dog.

Q. Where were you at the time he left?

A. In the apartment.

Q. Anybody else there?

A. No, sir.

Q. How long was Walder gone?

A. Oh, about 25 or 30 minutes, I reckon.

Q. What happened then when he came—did he return?

A. Yes, sir, he returned.

Q. Was he alone or was someone else with him?

A. He was alone.

Q. What happened when he returned?

163 A. He returned and he had a package, two packages, one was a milk sugar and the other was heroin that he gave me.

Q. What did he do when he returned?

A. He took it and mixed it together and put it in a small package.

Q. Well, you said he had two packages?

A. Yes, sir.

Q. Where did all this mixing take place?

A. Right over on the table, right there, we was in the kitchen.

Q. You were there together?

A. Yes, sir.

Q. At that time had you told him how much you wanted?

A. Yes, sir.

Q. When did you give him the money?

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A. Just before he handed me the package.
Q. And what kind of package was it he handed you?
A. A little cellophane package, looked like a cigarette covering.
Q. What did you do then?
A. I left. And I went down and went down Prospect to 26th and walked up 26th a little piece and they picked me up.
Q. Who picked you up?
A. The agent, Mr. Follmer, and Mr. Witt and Mr. Hall.
Q. The same ones that had taken you out there. What did you do when you met them?
A. Well, they searched me and took the package and seen I didn't have anything else.
164 Q. Did you have any other money?
A. No, sir.
Q. Did you have any other narcotics other than what you gave them?
A. No, sir.
Q. What did you do? To whom did you give the narcotics?
A. To him.
Q. To Mr. Witt?
A. Yes, sir.
Q. Did you do anything else?
A. No, sir.
Mr. AULL. You may inquire—one further question, excuse me.

By Mr. AULL:

Q. Everett, at the present time you are in the Missouri Penitentiary, is that correct?
A. Yes, sir.
Q. Serving a four year term?
A. Yes, sir.
Q. For grand larceny, is that right?
A. Yes, sir.
Q. And prior to this time you were in the penitentiary at Lansing, Kansas?
A. Yes, sir.
Q. What was that for?
A. Grand larceny.
Q. Those are the only two occasions you have committed felonies?
A. Yes, sir.
Q. At that time, directing your attention back to January of 1951, the time you are referring to, were you a user of heroin?
A. Yes, sir.

Mr. AULL. That is all.

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165 Cross-examination by Mr. ROPE:

Q. As a matter of fact, Mr. Jenkins, you are serving two consecutive four year terms in the Missouri State Penitentiary for grand larceny, are you not?

A. No, sir; I am not.

Q. What are they, concurrent?

A. Concurrent.

Q. For two separate crimes of grand larceny, is that correct?

A. Yes, sir.

Q. Where did you first meet the United States narcotics agent, Mr. Follmer?

A. Well, that has been a long time ago. I don't remember just exactly where it was at.

Q. How long ago, Mr. Jenkins?

A. Oh, it has been 8 or 9 years or better.

Q. You think it has been 8 or 9 years?

A. Yes, sir.

Q. Is your memory pretty good?

A. I imagine it is.

Q. Do you remember where you first met him?

A. No, sir. I think, I am not for sure, I know who I met him through.

Q. Whom did you meet him through?

A. Doley Brashear.

Q. Wasn't that where you first met him, then?

A. I imagine it was, I don't know; I imagine.

Q. So that you have known him for possibly 12 years or more, is that right?

166 A. Well, I don't remember if it had been that long or not.

Q. How long have you lived in this vicinity, this area?

A. Practically all my life.

Q. That is 35 years?

A. I imagine.

Q. Aside from those times that you have been in the penitentiary you have lived right in this area, is that right?

A. Yes, sir.

Q. You lived in Kansas City, Kansas, most of the time, didn't you?

A. The Twin Cities, yes, sir; worked over here.

Q. Well, in Kansas City, Kansas?

A. Yes, sir; and over here.

Q. Where do you live now? I mean where did you live before you went to the penitentiary?

A. 12th and Highland.

Q. When did you move to 12th and Highland?

A. When did I move there?

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Q. Yes; when did you move to 12th and Highland?
A. Well, I don't know exactly when.
Q. Well, you didn't live there very long, did you?
A. Well, I lived there better than a year or two, 1211.
Q. Better than a year of two?
A. Yes, sir.
Q. That was before you were arrested. Did you work in Kansas City, Kansas?
A. Yes, sir.
Q. Where did you work?
167 A. Well, I have worked as a janitor.
Q. What building?
A. Oh, I have worked at the Brookside Hotel, the apartments out there.
Q. Just a moment, I am referring to Kansas City, Kansas.
A. In Kansas City, Kansas?
Q. Where did you work in Kansas City, Kansas?
A. Oh, I worked at 1916 North 5th.
Q. What was that?
A. It was a tavern.
Q. How long did you work there?
A. About a year. And I worked at the Douglas Hospital that was located at 4th and Quindaro before—I worked out there about five years before I went in the Army.
Q. All right, where did you work after you got out of the Army?
A. I didn't have a steady job. I am a presser.
Q. Where were you discharged from the Army?
A. Fort George E. Mellon in Baltimore.
Q. What branch of service was that?
A. '45, Truck Quartermaster.
Q. Now, Mr. Jenkins, you worked in Kansas City, Kansas, most of the time you lived in Missouri, didn't you?
A. Part of the time; yes, sir.
Q. Well, you were working in Kansas City, Kansas, back during the year of 1950, were you not?
A. 1950? I was working in Missouri then.
168 Q. All of the time?
A. Off and on, the two cities, yes, sir.
Q. Off and on in the two cities. You did work part of the time in Kansas City, Kansas, didn't you?
A. Well, I don't——
Q. You just said "off and on in the two cities". In the year 1950 did you or did you not work for some period of time more or less in Kansas City, Kansas?
A. I don't remember.

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Q. You don't remember?

A. No, I don't.

Q. When you worked in Kansas City, Kansas, you used to eat quite a bit at a place called the "Tea for Two Tavern", didn't you?

A. Eat? No, sir.

Q. Eat, drink beer?

A. Yes, sir, I drank beer there.

Q. You never had a bite of anything to eat there, did you?

A. I may have had a sandwich, but I eat my meals at home, not at a tavern.

Q. Well, you spent some time in there, didn't you?

A. Yes, sir.

Q. You wouldn't venture to say how much time, would you?

A. No. I would go in and out.

Q. You used to go in and out quite frequently, didn't you?

A. Yes.

169 Q. Spent some money there, didn't you?

A. Yes, sir.

Q. Now, this defendant here, Sam Walder, that sits before you at this table was the owner of the Tea for Two Tavern at the time you went in and out of there, wasn't he?

A. Yes, sir.

Q. He was the owner of it?

A. Yes.

Q. And you traded with him over there, didn't you?

A. Yes, sir.

Q. You saw him on many, many occasions there, didn't you?

A. Yes, sir.

Q. As a matter of fact, every time you were in there almost, didn't you.

A. He wasn't there every time I was in there. He was there.

Q. He was operating the place, wasn't he?

A. Yes, sir, when he was there.

Q. How big a place was it?

A. It was a small place.

Q. Now, Mr. Walder used to extend you some credit over there, didn't he?

A. He might have.

Q. He might have?

A. Yes, sir.

Q. Do you happen to remember how much credit you might have been extended there?

A. Well, I couldn't tell you that. It wasn't for no beer or nothing.

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170 Q. What was it for?

A. Narcotics.

Q. He extended you credit for narcotics?

A. Yes, sir.

Q. Is that customary to do a narcotics business on credit?

A. If you are a customer.

Q. You have been in the penitentiary twice. Do they extend people credit for narcotics——

Mr. AULL (interrupting). Your Honor, I move to strike that—Your Honor, that is highly improper.

The COURT. That last question, the last form is highly improper.

By Mr. ROPE:

Q. Is your credit good?

A. I imagine.

Mr. AULL. I object to that as having no bearing whatever on the issues.

The COURT. Objection sustained. It is not a question of the relationship of these two people.

By Mr. ROPE:

Q. Well, you did receive credit from Mr. Walder at his place, did you not?

A. Yes, sir.

Q. And you received some credit over there for food and beer, didn't you?

A. I never received no credit.

Q. You say—just tell the Court and jury whether you did or did not.

A. No, sir, I did not.

171 Mr. AULL. If the Court please, I object to that as repetition.

The COURT. The objection is overruled. He has answered.

By Mr. ROPE:

Q. So that you want to tell the Court and jury now if you were extended some $15.00 worth of credit back in the month of December, 1950, by this man for food and beer, which was the largest amount ever—I am just referring to credit now—that that is incorrect, is that right?

Mr. AULL. If the Court please, I object to the form of the question.

The COURT. Yes, overruled.

The WITNESS. Come again.

Mr. ROPE. I didn't understand the ruling.

The COURT. It is overruled. The objection is overruled.

The WITNESS. Now, I didn't understand you, sir.

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By Mr. Rope:

Q. I will try to state the question again.

A. Reduce it, please, so I can understand it.

Q. If it were charged here that you were extended some credit up to the amount of $15.00 in December of 1950 by Mr. Walder while he was operating the Tea for Two Tavern——

A. Yes, sir.

Q. (Continuing). For beer and for food that you consumed there, that is incorrect? Just tell the Court and jury
172 whether it is or not.

A. I did not get any credit for any beer and food there.

Q. You did not?

A. No, sir.

Q. You always paid cash?

A. If I got it, yes, sir.

Q. Well, you did get some, didn't you? You stated you did.

A. Oh, I went there and drank a beer, not for that, to meet him.

Q. Then you said you might have eaten a sandwich there too.

A. I possibly could have.

Q. That is possible, yes.

A. Yes, sir.

Q. Now, as a matter of fact, back at the place, the Tea for Two Tavern, in December of 1950 you had quite an altercation with him because he refused to extend you any more credit, didn't you?

A. No, sir.

Q. You did not? You say that you didn't?

A. Yes, sir, I do.

Q. You never had any words about that whatsoever?

A. None whatsoever.

Q. In other words, you parted—you knew Mr. Walder and were you his friend?

A. Yes, sir, I imagine.

Q. You were his friend? You did business with him?

A. Yes, sir.

173 Q. Didn't argue with him, is that right?

A. No, sir.

Q. So that you want to tell me that in December of 1950, which is some month, or a short period of time before this date January 10th, that you and Mr. Walder parted the best of friends, is that right?

A. Parted the best of friends how?

Q. Yes, that you were friends, you weren't enemies?

A. We weren't enemies.

Q. But you want to tell this jury now that on January 10, 1951, some perhaps less than a month after the date that you were in

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his Tea for Two Tavern, that you were gladly willing to help the federal authorities arrest Mr. Walder?

Mr. AULL. If the Court please, I object to that. That is an argumentative question.

The COURT. Yes. The objection is sustained to the form of the question, not the substance. You just ask direct questions, Mr. Rope, we will just get along so much faster without getting in all these ramifications and adjectives.

Just ask direct questions and you will get answers.

By Mr. ROPE:

Q. Well, you were a friend of Mr. Walder's, you were not an enemy of his?

The COURT. He has answered that about three times. Let's go on to something else.

Mr. ROPE. If Your Honor please, I don't believe he
174 answered the last question.

The COURT. No, I am sure he didn't, because it was a pretty involved question. He says if you will simplify them a little bit, he can answer them, if you will reduce them, I believe he said. Go ahead and reduce them a little bit.

By Mr. ROPE:

Q. Now, you had no misgivings whatsoever about aiding the federal authorities on this occasion of January 10th, is that right?

A. I had no miss what? I don't understand.

Q. You didn't mind? You didn't hesitate on January 10th?

A. Well, no, sir.

Q. To aid them?

A. No.

Q. There was not hesitation on your part?

A. No, sir.

Q. Now, let me ask you this: Tell the Court and jury, Mr. Jenkins, whether or not you worked many, many times in the past with Mr. Follmer and Mr. Witt and Mr. Hall in helping them with other persons, just the way you say you did with Mr. Walder? Did you work with them many times?

A. Yes, sir, I did.

Q. How many times would you say you worked with them?

A. I don't remember, sir.

Q. You don't have any idea at all?

A. No, sir, I couldn't say.

175 Q. Then you are a well known informer, that is, you have acted in this capacity often?

Mr. AULL. If the Court please, he answered that question.

The COURT. Objection sustained.

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By Mr. Rope:

Q. Do you remember when the first time was, how many years ago?

A. No, sir, I don't.

Q. You don't have any recollection of that at all?

A. No, sir.

Q. Are you at present deprived of or are you using narcotics?

A. I am not using narcotics now.

Q. When is the last time you used any narcotics?

A. Oh, about, a little better than a year ago.

Q. Were you a habitual user at that time?

A. Well, I used narcotics, yes, sir.

Q. What did you use?

A. Heroin.

Q. Did you break yourself of the habit of using it?

A. Well, yes, sir, that is the only way you can break, I imagine.

Q. You never had any medical treatment whatsover for it?

A. No.

Q. You just broke the habit?

A. Yes, sir.

Q. Just one more question here. You have stated that you are now serving in the Missouri Penitentary. You were
176 sentenced on what date, do you recall?

Mr. Aull. If the Court please, that has no bearing. He has admitted the fact.

The Court. Overruled.

By Mr. Rope:

Q. On what date were you sentenced, do you recall that?

A. No, sir. It was in April or May of last year. I don't know just the exact date.

Q. Would April 9, 1951, be approximately correct?

A. It might be.

Q. When were you arrested for that crime?

A. It was in February of that same year.

Q. You were arrested in February?

A. Yes, sir.

Q. Do you remember the date of that?

A. No, sir, I don't.

Mr. Rope. I think that is all.

The Court. Anything further?

Mr. Aull. I believe that is all.

The Court. Now, what about this man? May he be excused? All of you come up here.

(Whereupon, discusson was had off the record, in the presence but out of the hearing of the jury.)

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The COURT. All right, this witness will be excused. You may return him, then, Mr. Guard.

(Witness excused.)

177 HENLY H. TAYLOR, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. AULL:

Q. State your name to the Court and jury, please.

A. Henly H. Taylor.

Q. Where do you live, Henly?

A. Kansas City, Missouri.

Q. Are you acquainted with the defendant, Sam Walder?

A. Yes, I am.

Q. Are you acquainted with Mr. Witt of the Narcotics Bureau and other officers of the Narcotics Bureau here in Kansas City?

A. Yes, I am.

Q. State to this Court and jury whether or not during the first part of April 1951 you agreed to work with the Narcotics Bureau as a special employee in connection with Sam Walder.

Mr. ROPE. We object to that, as to whether he agreed to work with them, as being leading and suggestive, leading this witness' testimony.

The COURT. Yes, that objection is sustained. Whether or not he did work with them, that is the important thing. Get right down to it.

By Mr. AULL:

Q. When is the first time that you were contacted by Mr. Witt relative to Mr. Walder?

178 Mr. ROPE. If it please the Court, we object to the improper conclusion on the part of the United States Attorney.

The COURT. The objection is overruled.

A. April 10th.

By Mr. AULL:

Q. April 10th. Prior to that time had you had any dealings with the defendant Walder?

Mr. ROPE. Now, we object to that as being irrelevant and immaterial, not tending to prove or disprove any issue in this case.

The COURT. Overruled.

Mr. ROPE. Further attempting to prejudice against this defendant.

The COURT. Overruled.

A. Conversations.

The COURT. What was the answer?

Mr. AULL. He said "conversations."

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By Mr. AULL:

Q. Is that it?

A. Yes, sir.

Q. What were those conversations about?

A. Well, about narcotics.

Q. What about them?

Mr. ROPE. We object to the subject-matter of these.

The COURT. Overruled.

Mr. ROPE. May it please the Court, he is now referring, now, Your Honor, to conversations prior to this alleged transaction, and having no bearing on the same whatsoever, and they are entirely irrelevant and immaterial, if such were had.

179

The COURT. Overruled.

By Mr. AULL:

Q. You may answer the question.

A. Well, he was wanting me to deal.

Q. You mean be a dealer in narcotics?

A. Yes.

Q. For whom?

A. Him.

Q. Now, directing your attention to April 10, 1951, do you recall having seen narcotic agents on that day?

A. April 10th?

Q. Yes.

A. Only over the telephone.

Q. Now, do you recall seeing them on the 11th?

A. Yes, I do.

Q. Will you state to the Court and jury what the circumstances were surrounding that?

A. Well, I met Agent Follmer, Hall and Witt at 10th and Lydia.

Q. That is here in Kansas City?

A. Yes, sir. We—on the previous day I had received a telephone number from Walder to call him.

Q. He had given you a telephone number to call him?

A. Yes, sir.

180

Q. Do you know what——

Mr. ROPE (interrupting). I object to that as leading this witness.

The COURT. Yes, it is leading. You will have to get, Mr. Aull—confine it, because we are going to have these objections. Confine yourself, now. Don't lead the witness. Take a little more time, we will have to do it.

Mr. AULL. All right, sir.

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By Mr. AULL:

Q. What happened on April 11th when you met these officers?

A. Well, they drove me to 8th and Woodland where Agent Witt and myself went in the drug store. He give me a nickel and I called a given number.

Q. What was the given number you are talking about?

A. It was Linwood 2372.

Q. Who had given you that number, Linwood 2372?

A. Sam Walder.

Q. When had he given you that number?

A. The day before.

Q. What happened when you made that call?

A. I talked to Walder.

Q. What was the conversation?

A. I wanted to make an appointment for some narcotics.

Q. What did he say?

A. To go to the Green Duck Tavern.

181 Q. Where is the Green Duck Tavern?

A. 26th and Prospect.

Q. What did you do following this telephone conversation?

A. Agent Witt and myself left the drug store and got in the car and we proceeded to 26th and Montgall.

Q. What happened there?

A. Well, Agent Witt searched me and give me $20.00 and——

Q. (Interrupting.) Who was present when this search was made?

A. Agent Follmer and Agent Hall.

Q. How well were you searched?

A. Well——

Mr. ROPE (interrupting). We object to that as being an improper question.

The COURT. Yes, just ask him how he was searched.

By Mr. AULL:

Q. How did they search you? What did they do?

A. They rolled my socks down and looked in the cuff of my pants, and my waist line, the fly of my pants, my hat band, my wallet, and my shirt pocket.

Q. Tell this Court and jury whether or not at that time you had any narcotics?

A. No, I didn't.

Q. You have testified they gave you some money. How much did they give you?

A. They give me $20.00 and a few nickels.

Q. What did you do following that search and receipt of that $20.00?

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182 A. I left them at 26th and Montgall and walked to the Green Duck Tavern at 26th and Prospect. I entered and stood around, I imagine about 15 minutes. I was paged to the phone, which was Walder telling me that he was a little late but he would be there. I then discovered the agent was in the laundry across the street, which was the City Laundry. I looked——

Q. (Interrupting.) Excuse me, go ahead.

A. I looked in the phone book for the number and called the laundry and got hold of Agent Follmer and told him why I was detained.

Q. What did you do then?

A. Continued to wait. In about 15 minutes more I received another call from Walder telling me to go to the Santa Fe Tavern.

Q. Tell this jury where the Santa Fe Tavern is.

A. It is about three or four doors from 27th and Prospect.

Q. How far is it from the Green Duck?

A. Oh, about a block and some doors.

Q. What did you do after you got that telephone call requesting you to go to the Santa Fe Tavern?

A. I left the tavern and walked to 26th and Montgall where the officers followed me.

Q. What happened when you got there?

A. I got in the car and related what had happened. They drove me to 27th and Montgall and Agent Witt searched me again and sent me to the Santa Fe.

183 Q. Did you have any narcotic drugs on you at that time?

A. No, I didn't.

Q. Did you still have the $20.00?

A. Yes, I did.

Q. You state, then, you went to the Santa Fe?

A. Tavern, yes.

Q. What happened when you got there?

A. I walked in.

Q. I would like to back track. How did you get there?

A. I left the car at 27th and Montgall and walked.

Q. What happened when you got there?

A. I walked in the tavern and waited a few minutes, I imagine about 15 or 20 minutes, and nobody showed up so I started to leave, which on the sidewalk in front of the tavern I noticed Sam across the street as though he was getting ready to cross.

Q. About how far was he from you when you saw him in relation to this courtroom?

A. About as far as from here to that door, that gate.

Q. This swinging door, is that it?

A. Yes.

Q. What did you do when you saw him?

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A. Turned around and walked back in the tavern.

Q. What direction was he looking at the time you were out there?

A. Across at me.

Q. Looking at you. What happened after you entered the Santa Fe Tavern the second time?

A. Well, he followed me in. He sat at the bar and looked
184 around. I walked up and sat beside him.

Q. What happened then?

A. He asked me if I wanted anything and I got a—we got a beer. I handed him the $20.00 under the bar and he handed me a package.

Q. Do you know how that package was wrapped?

A. Newspaper.

Q. There were stools at the bar, is that what you state?

A. Yes, there is stools.

Q. What did you do when you received the package in the newspaper?

A. I turned and left.

Q. Where did you go?

A. I walked to 27th and Montgall where the agents picked me up, and I turned the package of heroin over and was then searched.

Q. To whom did you turn that package over?

A. Agent Witt.

Q. This gentleman here?

A. Yes.

Q. Who searched you?

A. Agent Witt.

Q. Did you have the $20.00 on you at that time?

A. No, I didn't.

Q. Did you have any other narcotics other than the package in the newspaper?

A. No, I did not.

Q. Now, Mr. Taylor, directing your attention to the next day, the third count, April 12th, state to this Court and jury whether
or not you had occasion on that day to make another pur-
185 chase from him?

A. Yes, I did.

Q. Did you meet the agents on that date?

A. I did.

Q. Where was it?

A. 10th and Lydia.

Q. Do you know about when?

A. Well, I imagine between 7 and 8.

Q. Was that in the morning or evening?

A. Evening.

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Q. What happened when you met them?
A. We proceeded to 8th and Woodland.
Q. What agents did you meet on that occasion?
A. I met Agent Follmer, Witt, Shattuck, and Hall.
Q. Where did you go then first after you met them?
A. We went to 8th and Woodland to a drug store.
Q. What happened there?
A. I placed a phone call to Walder.
Q. What phone number did you call that time?
A. Linwood 2372.
Q. The same number?
A. Yes, sir.
Q. Who answered the phone?
A. Sam.
Q. Did you talk with him?
A. I did.
Q. What did you ask him? What was the conversation?
A. The sale of narcotics.
Q. What?
A. A sale of narcotics.
Q. Just tell the jury what you asked him or what he asked you.
A. Well, I told him I wanted to pick up and he told me
186 to meet him at the Green Duck.
Q. Pick up? What do you mean by "pick up"?
A. To receive the narcotics.
Q. He told you to meet him at the Green Duck?
A. Yes.
Q. Where did you go then?
A. I left the drug store and went to 26th and Montgall.
Q. What happened there?
A. Agent Witt searched me and give me $20.00 and I left the car and walked to 26th and Prospect to the Green Duck.
Q. Now, at that time did you have any narcotic drugs on you, at the time you were searched?
A. No, I didn't.
Q. Did you get the same type of a search that you had on the previous occasion?
A. Yes, sir.
Q. Did you have any other money other than the $20.00?
A. No, I didn't.
Q. What happened when you got to the Green Duck?
A. Well, I stood and waited for about 20 minutes and then I was paged to the phone, which was Sam, and asked me what took me so long.
Q. You mean Sam Walder?

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A. Yes. And I asked him what took him so long, so he told me to come to the Wilson's Bar right away.

Q. Where is Wilson's Bar?

187 A. That is between Harrison and Campbell on 18th.

Q. How far is it from the Green Duck?

A. It is a pretty good ways.

Q. Several blocks?

A. I imagine it is over a mile.

Q. All right. What happened after this telephone conversation?

A. I left and walked to 26th and Montgall where I entered the car with the agents and told them what happened.

Q. The same narcotic agents?

A. The same four, yes.

Q. What happened after you told them what had happened?

A. They drove me to 18th and Campbell. While on the way I was searched again.

Q. By whom?

A. By Agent Witt.

Q. This gentleman sitting here?

A. Yes.

Q. What happened when you got down there at 18th and Campbell?

A. Well, I told them that the place was kind of exclusive and I couldn't stand around, so they give me $20.50.

Q. You mean they gave you another $20.00?

A. No, the same $20.00.

Q. And 50 cents?

A. Give me 50 cents.

Q. What happened then?

A. Well, I left them at the corner of 18th and Charlotte—I mean 18th and Campbell, which I walked to the Wilson's Bar. I walked in, sat at the counter, the bar rather, I ordered a beer. I noticed Sam was talking to a lady.

188 Q. Sam Walder?

A. Yes. Which I waited until we caught eyes, and he motioned me to the restroom, the men's restroom.

Q. What happened then?

A. I followed him in.

Q. What happened in the restroom, if anything?

A. I give him the $20.00 and he reached under the face bowl and pulled out a package and gave it to me, and told me that I would have to get on the ball, that it would be $50.00 and no less than $50.00 from now on.

Q. It would be no less than $50.00?

BLURRED COPY

A. Yes, I couldn't pick up small amounts under $50.00.

Q. He told you thereafter you could not pick up amounts less than $50.00?

A. Yes.

Q. What were the capsules in that time, if you recall?

A. It was sort of a yellow bag or envelope.

Q. A sort of envelope bag?

A. Yes.

Q. What did you do then?

A. I left the bar.

Q. Before you left the bar did you have any other conversations about this?

A. Well, I admired his suit and he told me I could have one like it if I acted right.

Q. All right. You say you left the bar?

A. Yes.

Q. Where did you go then?

A. I went to 18th and Campbell where I got in the officers' car. I turned over the package of heroin which contained 10 caps.

189 Q. Who did you turn that over to?

A. Agent Witt.

Q. What was done when you turned that over to him?

A. I had a little change left, I turned over too, and then I was searched.

Q. Did you have any other narcotics on you?

A. No, I didn't.

Q. Did you have the $20.00 on you?

A. No, I didn't.

Q. What change was it you had?

A. From the beer, from the 50 cents.

Q. Directing your attention to a later time, May 8th, Count IV of the indictment, Mr. Taylor, state to the Court and jury whether or not on that date you had occasion to make occasion to purchase from the defendant, Sam Walder?

A. Yes, I did.

Q. Did you meet the officers on that date?

A. I did.

Q. The narcotic officers?

A. I did.

Q. Where was it that you met them?

A. At 10th and Lydia.

Q. When, what time?

A. It was afternoon.

Q. What happened when you met them?

A. They drove me to 8th and Woodland.

Q. Who were the officers on this occasion, the narcotic officers?

BLEED THROUGH– POOR COPY

A. It was Agent Follmer, Agent Witt, and Agent Shattuck.

Q. And they drove you to 8th and Woodland, you say?

190 A. That is right.

Q. What happened when you got there?

A. I went in the drug store and made a phone call to Walder.

Q. What number did you call this time?

A. Linwood 2372.

Q. The same number?

A. Yes, sir.

Q. Who answered the phone on that occasion?

A. Walder.

Q. What did you state to him then?

A. The same thing, I wanted to pick up.

Q. What did he say?

A. Well, he told me to come to the house.

Q. What did you do then?

A. I left the drug store, got in the officers' car and was drove to 26th and Montgall.

Q. What happened when you got there?

A. I was searched there.

Q. The same type of search as you have previously testified?

A. Yes.

Q. Who searched you?

A. Agent Witt.

Q. What happened when you were searched?

A. He then give me $50.00. I got out of the car and proceeded to the apartment.

Q. Now, where is that apartment located?

A. It is between 26th and 27th.

Q. On what?

A. On Prospect.

191 Q. What apartment did you go to?

A. Apartment three.

Q. What floor is that on?

A. The second floor.

Q. What happened when you got up there?

A. I knocked on the door.

Q. Tell the Court and jury what happened?

A. Well, I knocked a couple of times and no one answered. So I started away when I noticed Walder coming up the hall from the bathroom.

Q. What happened then? First of all—strike that. How was dressed?

A. In pajamas and bathrobe.

Q. Tell the jury what happened next.

BLURRED COPY

A. Well, he asked me if I had the money, the $50.00, and I told him yes. I handed it to him. He unrolled it and counted it and put it in his bathrobe pocket, reached in his waist and handed me a cellophane package which I received and started away. But, notice it, it wasn't as large as it should be for that amount of money. I looked in it and it had 8 caps of heroin in it, so I asked him where the rest of it was. He told me he hadn't picked up yet, he had to go to the hospital, he would pick up later. So I asked him to give me my money back, the rest of my money, which he did.

Q. He gave you how much back?

A. $34.00.

Q. Now, on all these occasions what was the arrangement between you and Sam Walder as to how much you were to pay him per capsule?

192 Mr. ROPE. We object to attempting to include every alleged occasion within this one question. I believe that is an improper question, your Honor.

The COURT. Overruled.

A. $2.00.

By Mr. AULL:

Q. You are acquainted with the price of drugs?

Mr. ROPE. Pardon me, I didn't hear the answer.

Mr. AULL. He said $2.00 a capsule.

Mr. ROPE. I didn't hear him say that.

Mr. AULL. I think it is in the record.

The COURT. Yes, he said it, $2.00. Talk a little bit louder, Mr. Taylor, so they can all hear you.

By Mr. AULL:

Q. Were you acquainted with the retail price of heroin at that time?

A. Yes, I was.

Q. What was heroin selling for retail?

A. $3.00.

Q. What was it selling for wholesale?

A. $2.00.

Q. Wholesale heroin was sold to commonly called pushers?

A. Yes.

Q. For resale, is that it?

A. Yes.

Q. At that time were you using narcotic drugs?

A. Yes, I was.

Q. Are you using them now?

A. No, I am not.

Mr. AULL. You may inquire.

BLEED THROUGH- POOR COPY

193 Cross-examination by Mr. ROPE:

Q. Where are you living now, Mr. Taylor?

A. Kansas City, Missouri.

Q. What is your address?

A. 2808 Independence Avenue.

Q. How long have you been living there?

A. Since October.

Q. Where did you live before that?

A. Independence, Missouri.

Q. At Independence, Missouri. What was your address at Independence, Missouri?

A. 115 Elizabeth.

Q. Is that a private home?

A. Yes, it is.

Q. Whom did you live with at Independence, Missouri?

A. My wife and family.

Q. Who are you living with now?

A. My wife and family.

Q. You moved to Independence Avenue, is that right?

A. That is right.

Q. Where are you working now?

A. Greenlyn Terrace.

Q. What is that?

A. It is apartments.

Q. What kind of work do you do there?

A. Janitor.

Q. How long have you been doing that?

A. Since October.

Q. What kind of work did you do in Independence?

A. I didn't work in Independence.

194 Q. What did you do there?

A. I lived there.

Q. Well, you didn't have a job?

A. Not in Independence.

Q. How long did you live in Independence?

A. Oh, I imagine about a couple of months.

Q. Where did you move to Independence from? Where did you live previous to that?

A. I lived on 19th and Highland.

Q. Why did you move to Independence?

A. Why?

Q. Yes, why?

A. Well, I got arrested for investigation and when I got out, my wife had moved.

Q. Investigation for what?

BLURRED COPY

Mr. AULL. If the Court please, I object to him going into that unless he proves there was a conviction. It has no bearing on where he was, what he was doing.

Mr. ROPE. Well, he voluntarily made the statement.

The COURT. Well, go ahead, he has mentioned it.

By Mr. ROPE:

Q. When were you arrested?

A. The 4th of July.

Q. On the 4th of July.

The COURT. What year? Get the year.

By Mr. ROPE:

Q. Of 1951?

A. That is right.

Q. And you were released after that without any charge at all?

A. Well, no, I had a charge.

Q. What was the charge?

A. I was charged with a sale of narcotics.

195 Q. Was that by the state or the federal government?

A. The state.

Q. Has that charge been dropped?

A. You will have to see my lawyer, I don't know.

Q. You mean you are charged with an offense against the law of this state and you don't know whether that charge has been dropped or not?

A. No, I don't.

Q. As a matter of fact, it is pending now, isn't it? Aren't you out on bond now?

A. Yes, I am on bond.

Q. In the Circuit Court?

A. Yes.

Q. Right at the present time your trial is pending, isn't it?

A. Yes.

Q. All right. Directing your attention back to April of 1950, during the month of April 1950, between the 1st and the 11th, do you recall what employment you were engaged in then?

A. In '50?

Q. 1951, prior to the date of this alleged sale?

A. Yes.

Q. What were you doing then?

A. I was a yard boy.

Q. For whom?

A. For anybody that wanted one.

Q. Were you working steady?

A. No, I had four days a week.

BLEED THROUGH– POOR COPY

Q. You had what?

A. Four days a week.

196 Q. Four days a week for whom?

A. For different people.

Q. What were the other two days for?

A. I hadn't had those filled out.

Q. Well, do you mean you divided up your time, four days for work and three days for loafing, or just how did you divide up your time during that period?

A. I had four days a week working, you know, cutting grass and yard boy, and if I got the others filled out—I was looking for work.

Q. What were you doing working for an employment agency or on your own behalf?

A. Myself.

Q. I am just trying to establish how you filled out your weeks during that period of time. What was your employment during March of 1951, the same thing?

A. Yes, I think so.

Q. Well, who did you work for during March of 1951?

A. Well, I worked for Mrs. Walter Springer.

Q. How long did you work for her?

A. Well, now, I don't know definitely.

Q. Did you work a week for her?

A. No.

Q. Just a day?

A. It was longer.

Q. What kind of work was that?

A. Chauffeur.

Q. How long did you work?

A. Well, considerable amount of time, I imagine four or five months.

197 Q. Well, if you worked for her that long aren't you able to state with greater precision than that how long you worked for her?

A. I told you——

Mr. AULL (interrupting). If the Court please, that is argumentative.

A. I told you four or five months.

By Mr. ROPE:

Q. When did you work for her?

A. During the time that you are speaking.

Q. I am only referring to the month of March now of 1951.

A. Well, if I am not mistaken I was working for her at that particular time.

BLURRED COPY

Q. Well, are you mistaken?

Mr. AULL. If the Court please, that is improper. He is asking for both horns of the dilemma.

The COURT. Yes, objection sustained.

By Mr. ROPE:

Q. Did you work for her the whole month of March of 1951?

A. Yes.

Q. And the month of February previous?

A. Yes.

Q. And the month of January previous to that?

A. Yes.

Q. And for the two months previous to that?

A. For one month previous of that, I know. I said four or five months.

Q. In April 1951, you didn't work for her any longer, did you?

A. No.

198 Q. Why did you leave that employment?

A. Well, because she was going to New York for awhile and if I could get—she couldn't fill my whole week out by her being gone, and if I could get employment elsewhere, why, it was all right.

Q. What do you mean she couldn't fill your whole week out?

A. With her gone, I would have about a couple of days a week there.

Q. After that you had three days a week, didn't you, set aside for——

The COURT (interrupting). What is the object? Where are we going? What is on your mind? Let's get down to where we are going. We will be here for a month the way this is going.

By Mr. ROPE:

Q. As a matter of fact, now, just this, you have never worked very long at any one place, have you?

A. Yes, I have.

Q. You haven't been working steadily at anything for the last year previous to April of 1951, had you?

A. Yes.

Q. Been drifting around, hadn't you?

A. No.

Q. Out around this neighborhood of 2620 Prospect a lot?

A. No, not too much.

Q. You were, of course, during these times when you weren't working, you were pretty much down and out, weren't you,

199 financially?

A. Well, not necessarily.

Q. Do you have a lot of money?

BLEED THROUGH— POOR COPY

A. I wasn't rich.

Q. Well, when you weren't working how did you live?

A. I lived on what I did work for.

Q. How much did you earn?

A. Different prices.

Q. What did you earn for the five months or four months that you worked for Mrs. Springer?

A. Well, I made on the average of $55.00 to $60.00 a week.

Q. Was that enough to keep you in heroin during that time?

A. Not necessarily.

Q. Well, you were using it all during that time, were you not?

A. Off and on.

Q. You have testified it is pretty expensive. How much of it would you use?

A. Maybe one cap a day.

Q. One cap a day. So you had $2.00 a day to spend for four months for heroin, didn't you?

A. I said off and on, I didn't say every day.

Q. Oh, off and on. You could turn it off and on, the urge to use that?

A. Me? Yes.

Q. I mean you have used that much of it but you can turn it off and on, is that right?

A. Yes.

Q. So when you don't want any more you just don't take it?

A. Not necessarily if I don't want it. If I don't have the money.

200 Q. If you haven't got the money what do you do to get it?

A. Go to work.

Q. You go to work to get money to buy the heroin, is that right?

A. If I want it.

Q. All right. But you were out of a job in April of 1951, weren't you? Mrs. Springer went to New York, didn't she?

A. I didn't say that.

Q. Well, you stopped working for her then, didn't you?

A. But I said I was working.

Q. You said you were doing general yard work?

A. Yes.

Q. Did you work every week four days a week?

A. Yes. Some weeks I worked more. Some days I—I filled the whole week, some weeks.

Q. Well, you want to change your testimony, then, that you have made previously?

Mr. AULL. If the Court please, that is highly objectionable.

BLURRED COPY

The COURT. The objection is sustained. You are going to get back on that week now. Go ahead.

By Mr. ROPE:

Q. What were you making during April, what were your earnings?

A. Well, it is just according to how much grass or how much hedge that I trimmed and the way I wanted to practice it.

Q. What did you charge for your yard work?

201 A. Different prices.

Q. Different prices to different people?

A. That is right.

Q. What was your average charge?

Mr. AULL. If the Court please, I am going to object to that as not tending to prove or disprove any issue in this case.

The COURT. Well, I think I know what he is trying to do, but he hasn't gotten anywhere near it yet. He has a little time left. Go ahead.

By Mr. ROPE:

Q. All right, now, Mr. Taylor, as a matter of fact, you never associated with Mr. Walder at all, did you?

A. What do you mean "associated"?

Q. Down in your neighborhood, where were you living, do you know, in April of 1951, at the time of this alleged sale, what was your address, do you remember that?

A. It was at 19th and Highland.

Q. You think it was at 19th and Highland. That is down in the general neighborhood, isn't it? You didn't run around with the same group of people that Mr. Walder did? You didn't associate with him socially at all, did you?

A. I didn't have no occasion to.

Q. As a matter of fact, he wouldn't associate with you socially either, would he?

A. It was his business.

202 Q. He wouldn't associate with you at all?

A. It was his business.

The COURT. I didn't understand. Talk out loud. Talk out loud so we can hear you.

A. I say we associated in business.

The COURT. In business. Go ahead.

By Mr. ROPE:

Q. He wouldn't have anything to do with you socially, would he? Just answer that question.

A. Well, I can't.

Q. Well, now, you recall back in late March or April, 1951, when you went up to Mr. Walder's place, as a matter of fact—

BLEED THROUGH— POOR COPY

I will change that just a little bit. I withdraw that question. You know very well that on many occasions, it is reputed around your neighborhood that Mr. Walder helped people out financially when they were in trouble?

Mr. AULL. If the Court please, that is objected to as hearsay.

The COURT. Objection sustained.

By Mr. ROPE:

Q. Now, sometime in late March or early April of 1951, you went up to his apartment, didn't you? Now, you have testified you went up to his apartment. You went up to his apartment and you tried to borrow some money from him, didn't you?

A. I don't recall that.

Q. You don't recall that but you might have, isn't that right?

203 A. Not money.

Q. Not money?

A. No.

Q. Well, you say you don't recall it. Will you say definitely now that you didn't go to his apartment in late March or April, 1951, for the purpose of getting some money from him? You were out of a job then. You had just lost this other job and you went to get a loan from him, didn't you, and you thought you could get it?

Mr. AULL. If the Court please, I think the witness ought to have a chance to answer one of the five questions.

The COURT. He has three and he hasn't answered any of them. If you want an answer you better wait long enough to get one. Answer the question.

A. It wasn't the money he had I wanted. I have made a loan of narcotics from him.

By Mr. ROPE:

Q. Just a moment, you have stated that before——

Mr. ROPE. If it please the Court, the witness is evading the question. All he has to do is say that he did or did not.

The COURT. You should answer whether or not you went up there to get money, to that question.

A. No.

By Mr. ROPE:

Q. All right, and further on the occasion after you had lost your job when you went up and knocked on Sam Walder's

204 door, he came to the door and he had been injured, hadn't he?

A. I think he had.

Q. You know he had, and he was on a crutch, wasn't he?

A. I have never seen him on a crutch.

BLURRED COPY

Q. You have never seen him on a crutch?

A. I have seen him limping but not on a crutch.

Q. See his leg bandaged up?

A. I didn't pay that much attention.

Q. You didn't pay that much attention, then. It might have been, is that right? So that on the occasion that you went up to his place, where—or you say you haven't gone to his place, you want to tell this Court and this jury that you weren't chased away from his apartment and told not to come back?

A. That I wasn't chased.

Q. You weren't chased away from his apartment, were you, or weren't you?

A. No.

Q. And you went back subsequently a week or two after that occasion and you want to tell this Court and jury now that his wife didn't tell you if you ever showed your face around there again she would call the police?

A. No, she told me that over the telephone.

Q. You were never told that. You were told to stay away from there?

A. No, I wasn't told to stay away. I was told by his wife to quit calling up there for Sam because Sam was not here.

205 Q. You were calling him too?

A. Naturally, I was calling him.

Q. Now, just one more thing. You have testified here that you made frequent phone calls on pay, public telephones to bars to Mr. Walder on all these occasions for the purpose of purchasing narcotics. Is that right?

A. No, I didn't say bars, I said drug stores.

Q. All right, drug stores. You made a couple of calls in a bar too, didn't you?

A. I received them.

Q. So it was common practice for you to use the telephone for your transactions, is that right? You walk in a phone booth?

A. That was the rule, yes.

Q. Just walk in a phone booth. You have done business with a lot of narcotic dealers, haven't you?

A. Yes.

Q. You use it and you have done business with a lot of them?

A. Yes.

Q. Now, that is common practice, is it, to transact your business by telephone in drug stores?

A. No.

Mr. AULL. If the Court please——

BLEED THROUGH— POOR COPY

By Mr. ROPE:

Q. It is not, is it?

206 Mr. AULL (continuing). I don't see where this has any bearing.

The COURT. The objection is sustained. We are not concerned with custom. We are concerned with facts in this case.

Mr. ROPE. I didn't hear the Court's ruling.

The COURT. The Court sustained the objection as being an improper question.

Mr. ROPE. I think that is all.

The COURT. That is all?

(Witness excused.)

RALPH WITT, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. AULL:

Q. State your name to the Court and jury, please.

A. Ralph Witt.

Q. You are an employee of the Narcotics Bureau here in Kansas City?

A. Of this district, yes, sir.

Q. You are located where?

A. At St. Louis, Missouri.

Q. How long have you been an agent of the Narcotic Bureau?

A. A little over four years.

Q. Are you acquainted with the defendant, Sam Walder?

A. Yes, sir, I am.

207 Q. Are you acquainted with Everett Jenkins?

A. Yes, sir.

Q. Are you acquainted with Henly Taylor?

A. Yes, sir.

Q. State to the Court and jury whether or not you had occasion to meet Everett Jenkins on or about the 10th of January 1950.

A. I did.

Q. What was the occasion of that meeting?

A. I had made arrangements to meet him and to purchase evidence from the defendant, Sam Walder.

Mr. ROPE. Now, we object to that as being an improper statement and ask that it be stricken and the jury instructed to disregard it.

The COURT. Yes, the objection is sustained.

By Mr. AULL:

Q. Did you meet him on the evening of the 9th?

A. Yes, sir, I did.

Q. Where was that?

BLURRED COPY

A. About 8 o'clock.
Q. That is Jenkins I am talking about.
A. Yes, sir.
Q. Where did you meet him?
A. As I recall, it was 17th and Highland.
Q. What happened when you met him?
A. Two other agents were with me, Agent Follmer and Agent Hall.
Q. What did you do?
A. We had a short discussion about purchasing heroin from the defendant——

Mr. ROPE (interrupting). We object to testimony
208 about any discussion among those agents as being hearsay.

Mr. AULL. It is not hearsay.
The COURT. Overruled.
Mr. ROPE. Entirely incompetent.
The COURT. He is laying the foundation, the reason why. Of course, the jury will not consider it unless they believe he sold it. That is the only purpose in the world. Overruled.
A. We then proceeded to the vicinity of his apartment to see if he was at home.

By Mr. AULL:
Q. To see if who was at home?
A. Sam Walder.
Q. Where was it you went?
A. 2620 Prospect.
Q. Is that his apartment?
A. Yes, sir.
Q. What happened when you got there?
A. We found out that he hadn't been home for some time——
Q. Where did you go then?
A. We went then to various bars and taverns on 12th and 18th Streets.
Q. Did you ever locate Sam Walder?
A. No, but at about 1 o'clock the next morning we received information at the Blue Room, which is located at the Street Hotel at 18th and Paseo, that he had been there with the Monarch basketball players and had then gone on home.
Q. Where did you go then? Did you go back to his home?

A. We received that information, or rather Mr. Jenkins
209 did and returned to the car and then we drove to the vicinity of 26th and Wabash.

Q. What did you do there?
A. At that time Jenkins was searched and supplied with official advance funds of District Number 11.
Q. Who searched him?

BLEED THROUGH– POOR COPY

A. I did.

Q. How much did you give him?

A. On that occasion $10.00.

Q. Did he have any narcotic drugs on him at the time you searched him?

A. No, sir, he did not.

Q. Did he have any other money on him at the time?

A. No, sir.

Q. What did you then tell Jenkins to do after you had searched him and given him the money?

A. He was instructed to proceed to the apartment of the defendant and attempt to purchase evidence.

Q. What did Jenkins do?

A. He then parted company with us and we followed him and observed him to enter the apartment building.

Q. That is at 2620 Prospect?

A. Yes, sir. Then we took up a position across the street where we could keep the entrance of this building under observation, and approximately 15 minutes later, I would say, the defendant, accompanied by a Boxer dog, was observed to leave this building and walk to the corner of 26th and Prospect where he remained a couple of moments and then returned to the building.

210 Q. Then what happened?

A. A short time later Everett Jenkins left the building proceeded to 26th and then west on 26th to Wabash where we picked him up and he turned over to me the cellophane envelope containing the heroin and at that time I searched him.

Q. Did you find any other narcotic drugs on him at that time?

A. No, sir, there were not.

Q. Did you find the $10.00 on him at that time?

A. No, sir.

(Documents, handed to the reporter, were marked for identification as "Plaintiff's Exhibit 1 to 4, inclusive, EFM.")

Q. What did you do with the envelope that you testified that Jenkins gave you that contained the substance?

A. This evidence was initialed for further identification or future identification, and I then took it to the office where it was placed in a locked, sealed envelope and delivered to the United States chemist for analysis and safekeeping.

Q. I want to hand you what has been marked by the reporter as Government's Exhibit 1 and ask you if you have ever seen that before?

A. This is the envelope containing exhibit 1 which I prepared and placed the evidence in the envelope and delivered it to the chemist.

Q. That is your writing on the outside?

BLURRED COPY

211 A. Yes, sir.

Q. Who was the chemist you delivered it to?

A. Lloyd E. Dale.

Q. By the way, was this substance turned over to—was that in capsule form or loose?

A. No, sir, it was a loose powder.

Q. Mr. Witt, directing your attention to April 10, 1951, state to the Court and jury whether or not that date you had occasion to contact Henly Taylor.

A. Yes, sir, I had a telephone conversation with him on that day.

Q. Why did you contact Taylor on that day?

A. He called me quite—well, maybe every other day, or I called him.

Q. Did you have any conversation with him that day respecting Sam Walder?

A. Yes, I did.

Q. State to the Court and jury what that conversation was so far as you were concerned.

A. He told me that——

Mr. ROPE (interrupting). Now, just a moment——

By Mr. AULL:

Q. Just state what you told him, don't say what he told you, that is hearsay.

A. Well, I asked him about various dealers.

Mr. ROPE. Just a moment, we again object to the testimony
212 here, if it please the Court. This is highly improper. He is attempting to relate half of a hearsay conversation.

The COURT. Let's get down to this case, gentlemen.

A. I made arrangements to meet him the following day.

By Mr. AULL:

Q. What happened the following day?

A. The following day Agent Follmer, Hall and myself went to 10th and Lydia where we met Henly Taylor.

Q. Do you know what time of day this was, or night, whenever it was?

A. I would say it was around 1 o'clock.

Q. In what?

A. In the afternoon.

Q. It was daylight?

A. Yes, sir.

Q. What happened when you got there?

A. We had some discussion there and Taylor told me that he had obtained a telephone number from Sam Walder and that if he needed narcotics he was to call the defendant at that number.

Q. What did you do then?

BLEED THROUGH– POOR COPY

A. We then drove to 8th and Woodland where Taylor and I when into the drug store and he called Linwood 2372.

Q. What happened then?

A. He was told by the defendant to proceed.

Q. Did you hear the conversation?

A. Only what Taylor said.

Q. Don't state what Taylor told you, state what you know.

A. Following the conversation Taylor told me that he was to go to the Green Duck Tavern.

213 Q. Don't tell what Taylor told you, state what you did.

A. I couldn't very well go on there unless he told me where the meeting was.

The COURT. Just say what you did.

By Mr. AULL:

Q. Tell us what you did.

A. Following that we returned to the car and drove to 26th and Wabash where I searched Taylor and supplied him with $20.00 official advance funds.

Q. At that time did he have any narcotic drugs on him?

A. No, sir, he did not.

Q. Did he have any other money on him other than what you supplied him with?

A. No, sir.

Q. What happened after you had searched him and given him the $20.00? Did you give him any directions?

A. First he requested some nickels for the telephone and then I told him to proceed to the Green Duck Tavern and wait for the arrival of the defendant.

Q. Sam Walder?

A. Yes, sir.

Q. What happened then?

A. Taylor proceeded to the Green Duck Tavern and entered, and Agent Follmer and myself entered the City Laundry where we could observe people going up and down the street, and also the Green Duck Tavern.

Q. How long was Taylor in the Green Duck Tavern?

A. He remained there for, I would say, 20 minutes, somewhere in that neighborhood.

214 Q. Then what happened?

A. He called us and told us he had received a telephone call and that Sam Walder would be there later.

Q. What happened then?

A. We waited some time again and we saw Taylor leave the Green Duck and proceed to our car, and we returned to the car and he told us that he had been instructed to go to the Santa Fe Tavern at 27th and Prospect.

BLURRED COPY

Q. What did you do then?

A. We got in the car and drove to 27th and Montgall where I again searched Taylor.

Q. Did he have any narcotics on him at that time?

A. No, sir.

Q. Did he still have the $20.00?

A. Yes, he did.

Q. Did he have any other money?

A. I think he had a nickel or two from the telephone change.

Q. What happened following that search?

A. We then shadowed him to 2713, which is the address of the Santa Fe Tavern, and observed him enter and we took up a position where we could keep this doorway under observation.

Q. How far were you from the doorway?

A. About 200 feet, 200 to 250 feet.

Q. Was your vision obscured?

A. On the east side of the street there was nothing there to obstruct us, no, sir.

Q. How about the other side of the street?

A. Well, just traffic going back and forth.

215 Q. Just cars that drove by just momentarily?

A. Yes.

Q. There was not a heavy flow of traffic there at that time?

A. No, sir, not at that time of day.

Q. You have testified that you saw Taylor enter the Santa Fe Tavern. What happened next?

A. He remained in there for some time, and then we saw him leave the tavern and stop on the sidewalk immediately in front, and about that same time the defendant, Sam Walder, was walking south on the west side of Prospect Street and he stopped immediately across the street, and apparently he was waiting for the red light to change at 27th Street so he wouldn't have the traffic to buck, and then he went on across and before he got there Taylor re-entered the tavern.

Q. Can you tell the Court and jury which direction Walder was looking at the time Taylor was out on the sidewalk?

A. It appeared he was looking directly at him. He was facing him.

Q. After Walder crossed the street where did he go?

A. He went into the tavern.

Q. After Taylor?

A. Yes, sir.

Q. When is the next time you saw Taylor?

A. Approximately 15 minutes later when he left the tavern by himself.

Q. Where did he go?

BLEED THROUGH— POOR COPY

216 A. He then went north on Prospect and a block east to 27th and Montgall where we met him. At this time Taylor turned over to me the 10 capsules of heroin that he had purchased and he was searched to determine that he had no other narcotics or money on him.

Q. Did he have any money on him?

A. No, sir.

Q. How about the money that you advanced him at that time, was any of that $20.00 on his person?

A. No, sir, there was not.

Q. What did you do with the capsules that he turned over to you at that time?

A. We initialed them for future identification.

Q. What did you do with them?

A. I prepared this envelope and placed them in the envelope, and delivered them to the United States chemist.

Q. I hand you, Mr. Witt, what has been marked by the reporter as "Government's Exhibit 2" and ask you if you ever have seen that before?

A. Yes, sir. This is the envelope containing 10 capsules of heroin which is marked "Exhibit 2."

Q. Where did you ever see that before?

A. I prepared it myself.

Q. What does it have relation to?

A. It contains the narcotics purchased on this instance.

Q. Which instance, on what date?

A. This was purchased on April 11, 1951.

217 Q. Who turned it over to you?

A. Henly Taylor.

Q. Who did you turn this package over to?

A. United States chemist, L. E. Dale.

Q. Mr. Witt, directing your attention to the following date, Count III of the indictment, did you again have occasion to contact Taylor on the 12th of April?

A. Yes, sir. We met him at 10th and Lydia and again we proceeded to 8th and Woodland where Taylor, by himself this time, called Linwood 2372, at my directions, and contacted the defendant, Sam Walder.

Q. Following that conversation what did you do?

A. We then drove to 26th and Montgall.

Q. Who was along on that occasion besides you and Taylor?

A. Agents Hall, Follmer, Shattuck and myself.

Q. What did you do when you got to 26th and Montgall?

A. He was searched and supplied with $20.00 official advance funds.

Q. Taylor was searched?

BLURRED COPY

A. Yes, sir.

Q. Did he have any narcotics on him at that time?

A. He did not.

Q. Did he have any money on him at that time other than the money that you advanced him?

A. No, sir.

Q. Who searched him?

A. I did.

Q. What did you direct him to do after you searched him?

A. He then went to the Green Duck.

218 Q. What did you tell him to do after you finished searching him?

A. I told him to go to the Green Duck Tavern and wait for the defendant.

Q. Sam Walder?

A. Yes, sir.

Q. What happened then?

A. We then followed him and observed him as he entered the Green Duck Tavern. He remained in there a short while and came back and joined our company and told us that he had received a phone call from Sam Walder.

Mr. ROPE. Just a moment, we object to what he was told. I think this witness knows better than that.

The COURT. Sustained.

By Mr. AULL:

Q. Just tell what you know. What time was this approximately, day or night?

A. It was in the evening.

Q. It was dark, is that correct?

A. Yes, sir. Taylor told us that he had to go to 18th Street and we drove him there, and en route I searched him again to determine that he had no narcotics.

Q. Did he have any narcotics on him at that time?

A. He did not.

Q. How about the money that you originally furnished him, the $20.00, did he still have that?

A. He had the $20.00.

219 Q. What happened when he got down to 18th Street?

A. We stopped in the vicinity of 18th and Campbell where Taylor was directed to go to Wilson's Tavern.

Q. Did you see him then after he left the car?

A. We saw him up to the time he entered the tavern door.

Q. The door of what?

A. Wilson's Bar.

Q. You saw him enter Wilson's Bar?

BLEED THROUGH– POOR COPY

A. Yes, sir.

Q. Did you again see him on that evening?

A. We saw him about half an hour later when he left the tavern.

Q. When he came out of Wilson's?

A. Yes, sir.

Q. Where did he go then?

A. He came back to the Government car where he again turned over to me the 10 capsules of heroin that he had purchased from the defendant.

Mr. ROPE. We object again to that statement.

The COURT. Objection sustained.

By Mr. AULL:

Q. Just tell what he did, not what he told you.

A. He turned over the narcotics to me.

Q. How many were there?

A. Ten capsules.

Q. Were they wrapped in anything?

A. I believe it was a manila envelope.

Q. Did you search him at that time?

A. Yes, sir.

Q. Did he have any other narcotics other than those he turned over to you?

A. No, sir, he did not.

Q. Did he have any of the $20.00 that you had advanced him?

220 A. No, sir.

Q. What did you do with the package, the envelope that was turned over to you containing these capsules by Henly Taylor, namely, on April 12th?

A. They were marked for future identification and I placed them in locked, sealed envelope which was delivered to the United States chemist.

Q. You kept them in your custody until you delivered them to him?

A. Yes, sir.

Q. I hand you what has been marked by the reporter as Government's Exhibit 3 and ask you if you have ever seen that before?

A. This is the envelope containing the 10 capsules of heroin which I prepared and delivered to the United States chemist.

Q. Does that contain a package that was turned over to you by Taylor on the evening of the 12th of April?

A. Yes, sir.

Q. You turned this over to Mr. Dale?

A. Yes, sir.

BLURRED COPY

Q. Directing your attention to the 8th of May, the fourth count of the indictment, did you have occasion on that date to see Henly Taylor again?

A. I did.

Q. Where was it and who was with you when you saw him on that occasion?

A. Agents Follmer and Shattuck.

221 Q. Where was it you saw him and when?

A. We met him at 10th and Lydia and again we proceeded to 8th and Woodland where I instructed Taylor to call Linwood 2372 and contact the defendant.

Q. Were you with him when he made the phone call?

A. No, sir, I was not.

Q. What happened following the phone call?

A. He then returned to the car and we drove to 26th and Montgall.

The COURT. Before we get that—you are starting on a new one; let's take a few minutes recess.

(Whereupon, a short recess was had.)

By Mr. AULL:

Q. Mr. Witt, at the time of the last recess I had directed your attention to May 8, 1951, Count IV of the indictment. Did you have occasion on that date to again see Henly Taylor?

A. Yes, sir, I did.

Q. Where was it that you saw him?

A. I saw him at 10th and Highland.

Q. He made a phone call?

A. We proceeded to 8th and Woodland where the phone call was made by Taylor.

Q. After that I believe you testified you rearched him?

A. We went to 26th and Montgall and then I searched him.

Q. Will you state to the Court and jury whether or not at that time you found any narcotic drugs on him?

222 A. No, sir, we did not.

Q. Did he have any money on him at that time?

A. No, sir.

Q. Did you supply him with any money?

A. I gave him $50.00.

Q. What did you tell him to do with the $50.00?

A. I directed him to the apartment of Sam Walder.

Q. For what purpose?

A. To purchase a supply of narcotics.

Q. From whom?

A. From the defendant, Sam Walder.

Q. What happened after the search and your giving him the $50.00?

BLEED THROUGH— POOR COPY

A. We then followed him and I observed him to enter the apartment building.

Q. Whom do you mean by "we"?

A. Agents Shattuck, Follmer and myself.

Q. All of you narcotic agents?

A. Yes, sir.

Q. About what time of day or night was this?

A. About 1:30 in the afternoon.

Q. You state you saw him enter the apartment?

A. Yes, sir.

Q. What apartment did he enter?

A. 2620 Prospect.

Q. Sam Walder lived there at that time?

A. Yes, sir.

223 Q. Then when again did you see Taylor the next time?

A. Oh, approximately 20 or 25 minutes later when he left the apartment building.

Q. What did he do?

A. He walked north on Prospect to 26th Street and crossed 26th to Montgall where we met him and here he turned over to me the package of narcotics.

Q. Did you search him at that time?

A. He was searched, yes.

Q. Did you discover any narcotics on his person?

A. No, sir, I did not.

Q. Did he turn over anything to you besides narcotics?

A. No, sir, that is all he had on him was the narcotics.

Q. How about money?

A. He had no money on him.

Q. He had no money?

A. I beg pardon. On this occasion the defendant stated that he didn't have the 25 capsules and he had only gotten 8 capsules.

Q. Just tell us what he gave you?

A. He gave me 8 capsules of heroin.

Q. What else?

A. $34.00 in currency.

Q. Did he have any other currency?

A. No, sir.

Q. Did he have any other narcotics?

A. No.

Q. What did you do with the 8 capsules he gave you?

A. I placed them in a sealed envelope which I delivered to the chemist for analysis.

Q. I hand you what has been marked by the court re-

224 porter as Government's Exhibit 4 and ask you if you have ever seen that before?

BLURRED COPY

A. This is the sealed envelope which contained the narcotic evidence which was purchased on May 8th.

Q. Is that the envelope which you testified you turned over to the United States chemist, Mr. Dale?

A. Yes, sir.

Q. It was in your possession from the time it was turned over to you by Taylor until you turned it over to Mr. Dale?

A. Yes, it was.

Q. On any of these four occasions did either one of these individuals, Jenkins or Taylor, have any blank order forms to purchase narcotics at the time they were sent out to make the purchase?

A. They did not.

Mr. AULL. You may inquire.

Cross-examination by Mr. ROPE:

Q. Mr. Witt, directing your attention to the first of these alleged transactions involving narcotics, January 10, 1951, you say that you met Jenkins at what time of that evening?

A. About 8 o'clock.

Q. Do you recall who contacted who on that occasion?

A. I believe Agent Follmer had made arrangements for the meeting.

225 Q. Do you know yourself, of your own knowledge?

A. Yes. Agent Follmer and I discussed it and we agreed that 8 o'clock at night would be a suitable time for all concerned.

Q. Do you of your own knowledge know? Were you present at any time when the initial contact was made with this man Jenkins? Do you know who contacted who, whether Agent Follmer contacted Jenkins or whether Jenkins contacted Follmer?

A. On this occasion?

Q. Well, that was the only occasion on which you stated you dealt with Jenkins, is it not?

A. I have met him on occasions but on this occasion he had called the office and talked to Agent Follmer, and then we had made arrangements and he related the information to——

Q. (Interrupting.) Jenkins called Agent Follmer, isn't that right?

A. I believe that is correct.

Q. Now, it is correct, is it not, as Agent Follmer testified—I will withdraw that question. You have known Jenkins, now, for the four years you have been in the service here in Kansas City, is that right?

A. About three and a half years.

Q. Now, as Agent Follmer testified, Jenkins had never previously worked with you on such an alleged transaction had he?

BLEED THROUGH— POOR COPY

226 A. Not on purchasing evidence, no.

Q. Not on going out and being searched and so on, the whole proceeding, that was the first time, wasn't it?

A. Yes, sir.

Q. So that if Jenkins says that he worked with you on many occasions, that is incorrect, is it not?

A. It is not.

Q. I am referring to just such a transaction and no other.

A. As far as transactions, yes, but as far as working with us on a number of occasions, no.

Q. Let's get this straight and keep it from being a double-barreled answer.

A. I don't intend for it to be.

Q. I know you don't, but if Jenkins testifies or has testified that he had engaged in many such transactions with you agents, just as you have described as took place here, this identical type of transaction, that is incorrect, is it not?

Mr. AULL. If the Court please, that is an improper question.

The COURT. Yes. The objection is sustained. You can prove whether or not he did, but that is for the jury to say, that is one witness passing on another witness' testimony is improper.

Mr. ROPE. If it please the Court, the witness Jenkins, to reiterate just a little bit, has testified that he worked with these
227 agents on many such similar type of transactions.

The COURT. Are you sure about that?

Mr. AULL. I don't think he did. I think this witness can explain what type of transactions he worked on.

Mr. ROPE. I think that is fully explained, I am not arguing about that at all.

The COURT. For this witness to say that another witness has testified falsely—you might ask him what he did and the jury will determine what the facts are.

By Mr. ROPE:

Q. Well, did the informer Jenkins ever work with you previously on this type of transaction that you have related to the jury here?

A. Not on this type, no, sir.

Q. All right, that is all. Now, is it your testimony that you met the informer Jenkins and that you looked around all over at various places for the defendant here, Sam Walder?

A. That is correct.

Q. Now, you know, do you not, that on January 10, 1951, the defendant, Sam Walder, was the operator of the Tea for Two Tavern in Kansas? Do you know that or don't you?

A. No, I do not.

Q. You didn't know that?

BLURRED COPY

A. No.

Q. You wouldn't say that he wasn't, but you didn't know that?

228 A. You name the specific date and I answer as to that date.

Q. Well, you know that he did operate that tavern at some time, don't you?

A. Yes.

Q. It is customary for taverns, as you know, to remain open late, isn't it, or isn't it?

Mr. AULL. I want to object.

The COURT. The objection is sustained. We are not dealing with the custom.

By Mr. ROPE:

Q. Was it ever suggested by any of the agents in the course of the entire evening that you look for the defendant Walder at the Tea for Two Tavern?

A. The telephone call was made there.

Q. What telephone call?

A. Jenkins called the Tea for Two.

Q. How do you know that he called the Tea for Two?

A. He told me that he had.

Mr. ROPE. Well, we move that be stricken.

The COURT. No, you asked for it. The objection is overruled. You asked him how he knows and he has told you.

Mr. ROPE. Well, if it please the Court, I think in case of any question the witness can only testify from what he knows.

The COURT. You asked him how he knows and he told you. Now, the Court is not going to strike it out. If you ask

229 for it, Mr. Rope, you are going to have to take what you get. You ask a man and he tells you how he knows it, that is all he can do. The objection is overruled.

By Mr. ROPE:

Q. But you didn't see the call made?

A. No, sir.

Q. So that it was never suggested otherwise that he be looked for at that place?

A. I think that it was suggested, in fact, Agent Follmer suggested it.

Q. But you never got over there?

A. No, we didn't go over there.

Q. In the course of that some three hours, perhaps——

A. No, we never did go over there.

Q. You had an automobile, didn't you?

A. Yes, we did.

BLEED THROUGH— POOR COPY

Q. Now, directing your attention to the date charged in Count II of the indictment, April 11th of 1951, you have testified that there was one or more telephone conversations? You yourself never talked to the defendant Walder on that occasion, did you?

A. I did not.

Q. And you yourself do not know of your own knowledge whether there was ever a conversation with him?

A. No, sir.

Q. Now, you have also testified that the informer, Henly
230 Taylor, entered the Green Duck Tavern and returned. Did you go in the Green Duck with him?

A. No, sir.

Q. And you don't know whether he talked to this defendant or anyone else while he was in the Green Duck, either by phone or personally or otherwise, do you?

A. Not of my own knowledge, no, sir.

Q. And where is the place, now, that you say that this transaction took place?

A. The Santa Fe Tavern.

Q. At the Santa Fe Tavern. Now, I believe that your associate, Agent Follmer, has testified that you were approximately 250 to 300 feet away from that point waiting in the automobile, is that right?

A. That is correct.

Q. And during that time he stated that he got out of the car. Now, did you ever get out of the automobile?

A. No, sir.

Q. You were in the automobile all the time?

A. Yes, sir.

Q. Now, you have stated here that you saw Taylor go into the tavern, the second tavern—what was the name of that one you related?

A. The Santa Fe Tavern.

Q. That you saw him go into the Santa Fe Tavern. You
231 were about 300 feet away, and that you saw the defendant Walder sometime later, perhaps 25 or 30 minutes later, cross the street?

A. That is correct.

Q. From the Santa Fe Tavern. Now, you are definite that that was the defendant Walder?

A. Yes, sir.

Q. You were 300 feet away?

A. I was not 300 feet away. Agent Follmer stated that he was from 250 to 300 feet away. I estimate the distance at 200 to 250.

Q. You were together, were you not?

A. We were.

BLURRED COPY

Q. And you never approached closer than that at that time, did you?

A. Not until the completion of the transaction.

Q. So that the only one who was working for you as alleged here was the informer, Henly Taylor, isn't that right, down there at that tavern?

A. That is right.

Q. And he was the only one that ever came in contact, if anyone did, with the man you describe at Sam Walder, is that right?

A. That is correct.

Q. Now, at the time you saw Sam Walder, where was Henly Taylor?

A. He was on the sidewalk immediately in front of the
232 Santa Fe Tavern.

Q. Now, if the informer Taylor has testified that he was in the tavern and looked out and saw Sam Walder, would you say that he was incorrect in that?

Mr. AULL. If the Court please, that is improper again.

The COURT. Objection sustained.

By Mr. ROPE:

Q. You say that he was on the sidewalk?

A. That is correct.

Q. Then you say that you saw these parties go back into the tavern, is that right?

A. That is right.

Q. Can you describe the defendant as he appeared at that time?

A. I noticed he walked with a slight limp and also that he was wearing a light tan Camel's hair coat.

Q. Is that all?

A. And a dark brown hat, felt hat.

Q. You didn't see anything of the man that you saw using a crutch or with a foot bound up or anything of that sort, did you?

A. No, sir.

Q. And that was on April 11th, was it?

A. Yes, sir.

Q. Now, you didn't have any transaction yourself with this party?

A. No, sir, I did not.

233 Q. And following that date or immediately following that, or for some time there was no arrest made in this case, was there?

A. No, sir.

Q. What was the date of the arrest in this case?

A. I don't know.

Q. You do not know that?

A. No, sir.

BLEED THROUGH- POOR COPY

Q. Did you participate in it?

A. I did not.

Q. Now, directing your attention to the date of April 12th charged in the indictment where a transaction took place, as alleged, you never saw the defendant, Sam Walder, at all on that date, did you, or anyone you might describe as him?

A. No, sir, I did not.

Q. All of the dealings that have been alleged to have been carried on with this defendant are alleged to have been carried on by the informer, Henly Taylor, isn't that right?

A. That is right.

Q. You can't say of your own knowledge whether he ever saw or talked to Walder on that date, can you?

A. No, sir.

Q. Now, directing your attention to May 8th, charged in Count IV of the indictment as the date when an alleged sale was made to Henly Taylor, it is stated there was a telephone call made at that time, is that right?

A. That is right.

Q. You don't know of your own knowledge who that call
234 was made to, do you?

A. No, I do not.

Q. You didn't make the call?

A. No, sir.

Q. You never talked to the party on the other end of the wire. Now, you went out to the vicinity of this apartment building, did you not?

A. We did.

Q. What is that? That is a three-story apartment building?

A. Yes, sir.

Q. How many apartments does that have, do you know?

A. I believe eight.

Q. And how far away from there would you say you were?

A. About 100 feet.

Q. You remained 100 feet away?

A. Yes, sir. We were catercornered across the street, about 100 feet away.

Q. Now, at that time you testified that Henly Taylor went into the building?

A. Yes, sir, he went in there prior to our taking up that position.

Q. How long was he in there, would you say?

A. Probably 25 or 30 minutes.

Q. Would you say it was more than that?

A. No, sir.

Q. You are pretty definite about the length of time?

A. I said approximately.

BLURRED COPY

Q. You don't know what apartment he went into or whether he went into any apartment in that building?

235 A. He was directed to go to Apartment 3.

Q. Well, I didn't ask that.

Mr. Rope. I move that answer be stricken.

A. No, sir, I do not.

By Mr. Rope:

Q. You do not and don't know who he saw or whether he saw anyone in there, do you?

A. No, sir.

Q. And you never saw the defendant, Sam Walder, on that occasion, did you?

A. No, sir.

Q. At any time?

A. No, sir.

Mr. Rope. Well, I will close with that. Thank you.

Redirect examination by Mr. Aull:

Q. Mr. Witt, directing your attention to that apartment building that we are talking about, does your office have any information of any other alleged narcotic dealers in that building?

A. No, sir.

Mr. Rope. Just a moment, we object to that.

The Court. Objection sustained, and the answer will be stricken out.

By Mr. Aull:

Q. Relative to the question that was asked you about the first time that Taylor was along, that was April 11th, is that correct?

236 A. Yes, sir.

Q. Did you go with Taylor when he made that telephone call?

A. Yes, sir.

Q. Did you see the number dialed on that phone?

A. Just——

Mr. Rope (interrupting). Just a moment, we object to this as being leading and suggestive. He has already testified as to that point.

By Mr. Aull:

Q. You went into the——

Mr. Rope (interrupting). He is just leading him over again and leading him.

The Court. That is definitely not leading.

Mr. Rope. It is repetitious. It has been gone over.

The Court. Overruled.

BLEED THROUGH– POOR COPY

A. As a matter of fact, on this occasion he called the number a couple of times and got a busy signal.

By Mr. AULL:

Q. Did you see what number he called on that occasion?

A. Linwood 2372, and I even dialed the same number myself and handed the phone to him.

Q. Do you know whose name that number was in at that time?

A. The phone is not listed.

Q. Did you have occasion to check to determine that?

A. Yes, sir, it was checked.

Mr. ROPE. Just a moment, we again object to this as
237 being leading.

The COURT. Overruled.

A. The phone is subscribed for by the defendant.

By Mr. AULL:

Q. Sam Walder?

A. But it is not listed.

The COURT. I think that is objectionable. If you want to prove that, I think you will, if there is any question about it, you will have to bring the telephone company's records here to prove that number. This man can't testify to it.

By Mr. AULL:

Q. Now just one more question. Mr. Rope has asked about why an arrest wasn't made after that second purchase on the 11th of April.

Mr. ROPE. If it please the Court, I didn't ask—I am being misquoted.

The COURT. No, he did not, Mr. Aull. He did not ask. My recollection of the testimony is he didn't ask this witness, he asked the other witness.

Mr. AULL. The other witness, yes, sir.

The COURT. You have a right to ask this witness if you want to.

Mr. AULL. That is why I am going into that now.

The COURT. But not repeating that he asked, because he did not ask that question.

Mr. AULL. No, sir. This is in the form of direct examination for that purpose.

238 The COURT. Just leave that part of it out, so far as counsel asking this witness.

Mr. AULL. That is right.

The COURT. Ask him why they didn't make the arrest.

By Mr. AULL:

Q. Can you state why the arrest was not made at that time?

BLURRED COPY

Mr. Rope. If it please the Court, we object to that as being irrelevant and immaterial.

Mr. Aull. You went into it.

The Court. Why did you ask it, then?

Mr. Aull. I merely ask whether it would be——

Mr. Rope. It is in evidence.

Mr. Rope. I withdraw my objection. I have no objection.

The Court. Go ahead.

A. There were two reasons. First of all, we wanted to determine the source of supply; and, secondly, we wanted to protect the life of the informer.

Mr. Aull. You may inquire.

Re-cross-examination by Mr. Rope:

Q. Now, you state that you wanted to protect the life of the informer?

A. That is correct.

Q. You have never previously stated on your testimony here, have you, that the life of the informer in this case had been
239 threatened, have you?

A. That is my understanding, he has received threats.

Q. You don't know whether it has been or not, do you?

A. No, sir.

Q. So as a matter of fact, you have no knowledge of that point at all?

A. No, sir.

Q. And when you make that statement you are making it because if such was done, it was routine, is that right?

A. No, sir. We had an informer murdered here in this town in 1949.

Q. We understand.

A. As a result of a case like that.

Mr. Rope. I move that all be stricken as not responsive to any question.

The Court. Yes, that part of it will be stricken out. Just that part with respect to the informer who was murdered.

By Mr. Rope:

Q. You have no knowledge of any threat having been made and no threat has been charged to have been made by this defendant upon any informer?

A. That is correct.

Q. There has been no such charge at all, neither you or——

The Court (interrupting). Just a moment, Mr. Rope. When you ask a question, if you want an answer, now, if you
240 want to argue with the jury, please, when you ask a question

BLEED THROUGH– POOR COPY

give the witness an opportunity to answer before you proceed to another one.

Mr. ROPE. I am sorry. No further questions.

The COURT. I understand you are on edge and keyed up, I am not critical of you. I just want to guide you along here, if I can. That is all.

(Witness excused.)

* * * * *

273 DEFENDANT'S CASE

Whereupon, the defendant, to sustain the issues in his behalf, offered testimony, oral and documentary, and made admissions, as follows, to wit:

Mr. ROPE. I will call the defendant, Sam Walder, to the witness stand, please.

SAM WALDER, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination by Mr. ROPE:

Q. Will you state your full name, please?

A. Sam Walder.

Q. And where were you living at the time of your arrest, Mr. Walder?

A. At the time of my arrest, 2201 Flora.

274 Q. And you understand, Mr. Walder, that you have been charged in four counts in an indictment by the United States with sales of a narcotic on the date of January 10, 1951, April 11, 1951, April 12, 1951, and May 8, 1951?

A. I do.

Q. Now, first, Mr. Walder, before we go further in your testimony, I want to you tell the Court and jury whether, not referring to these informers in this case, but whether you have ever sold any narcotics to anyone.

A. I have never sold any narcotics to anyone in my life.

Q. Have you ever had any narcotics in your possession, other than what may have been given to you by a physician for an ailment?

A. No.

Q. Now, I will ask you one more thing. Have you ever handed or given any narcotics to anyone as a gift or in any other manner without the receipt of any money or any other compensation?

A. I have not.

Q. Have you ever even acted as, say, have you acted as a conduit for the purpose of handing what you knew to be a narcotic from one person to another?

BLURRED COPY

A. No, sir.

Q. Now, more specifically, directing your attention to the witness for the Government, Everett Jenkins, did you ever have any kind of transaction with him whatsoever?

A. Yes, I have had transactions with him. He has been over to—I operate a tavern over in Kansas City, Kansas, and
275 he visited the place over there. In fact, he bought food and beer there quite frequently.

Q. Now, did he buy anything else from you there?

A. Nothing else other than food and beer.

Q. Now, directing your attention to—has he bought anything from you anywhere else?

A. No place but the Tea for Two. That is the only place that I have operated here.

Q. And those transactions concerned food and drink?

A. That is correct.

Q. Now, directing your attention to the witness for the Government, Henly Taylor, has he ever been over in your tavern to your knowledge, over at the Tea for Two?

A. Not while I was there. I have never saw him over to the place.

Q. You have never done any business with him over there?

A. No, not there or anyplace else.

Q. You have never had any type of transaction whatsoever with Henly Taylor?

A. No.

Q. And you know to whom I refer, you saw him take this witness stand?

A. Yes, sir.

Q. And you understand—Mr. Walder, let's go back just a little bit. How old are you?

A. Thirty-seven.

Q. And where did you grow up?

A. Well, I was born in Taft, Oklahoma, and attended school at Waukegan, Illinois.

276 Q. When did you go to Waukegan?

A. At the age of four.

Q. Whom did you live with there?

A. I lived with my aunt there.

Q. Your aunt?

A. Yes.

Q. Now, after you finished school—what grade did you attend in school? What was the last?

A. I finished high school and after that I went to the Debusse Mixology School at Chicago, Illinois.

Q. Will you tell the Court and jury what that is?

BLEED THROUGH- POOR COPY

A. Well, it is a school for mixing drinks that is maintained by the Debusse Cordial Company, and it is the requirement in the State of Illinois that all licensed bartenders attend this school.

Q. Did you finish that course there?

A. Yes, I graduated from the school.

Q. How long was it, by the way?

A. It was an 8 month course.

Q. What did you do after that?

A. I went to work at the Club Delissa as a bartender.

Q. As a bartender?

A. Yes, sir.

Q. Are you a member of the Union up there?

A. Yes, sir, Local 444.

Q. Now, will you go ahead and tell the jury how long you worked there?

A. Well, I worked there until I was inducted into the army in June of '42.

Q. When were you discharged from the army?

277 A. December 7th, in 1943.

Q. And your rank?

A. First sergeant.

Q. What did you do after you left the service?

A. Well, I returned to my job that I left, I mean my job was waiting for me when I returned from service.

Q. At what place was that?

A. The Club Delissa.

Q. Go ahead.

A. I worked there for several months and later I purchased a place of my own out at 544 East 63rd Street, in Chicago, Illinois.

Q. You went into your own business then?

A. Yes, sir.

Q. What was that?

A. That was the Wonderbar Tavern.

Q. You operated that yourself, did you?

A. Yes, I did.

Q. How long did you operate that business?

A. I operated it until 1948.

Q. Go ahead, then what took place?

A. Well, after that, I—my brother wanted to sell this place here, so I sold my place out there and came here and opened up the Tea for Two. That is, I purchased it from my brother over in Kansas City, Kansas.

Q. Your brother's name is what?

A. Burt.

Q. Burt Walder?

A. No, his name is Hendricks, he is a half brother of mine.

BLURRED COPY

Q. You purchased that place of business from him?
278 A. Yes.
Q. And sold your business in Chicago, is that right?
A. Yes.
Q. And you came here to live?
A. Yes, sir.
Q. Now, you say that was in 1948?
A. That is correct.
Q. Do you remember the month?
A. Well, not specifically. I know that it was before the holiday season.
Q. Did you state the address of that place of business over there?
A. 1111 North Fourth.
Q. You no longer operate that?
A. No, I don't.
Q. Was that sold?
A. Yes, I sold it shortly after I was injured.
Q. What do you recall was the approximate date of that sale?
A. It was around the 10th of March, I am not certain on the date.
Q. Now, going back for a moment to the Tea for Two Tavern, you operated it then from sometime before the holiday season of 1948 until around sometime in March of 1951?
A. That is correct.
Q. That was your own business, was it?
A. That is correct.
Q. Were you habitually there, were you there all the time?
A. I was there, that is, most of the time, yes, sir.
Q. Who opened up the place in the morning?
A. I did.
Q. What time would you open up?
279 A. Open up at 9 o'clock in the morning.
Q. What did you serve there?
A. We served hamburgers, fish, ice cream, candy, beer, and that is all.
Q. In other words, it was a restaurant and you had a beer license?
A. Yes, sir.
Q. There was no strong alcoholic beverage sold there?
A. No.
Q. 3.2 percent beer, is that correct?
A. That is correct.
Q. And you had a license for that from the city, is that right, in Kansas City, Kansas?
A. That is right.

BLEED THROUGH– POOR COPY

Q. Was there anybody else operating that place with you?
A. No.
Q. Anyone ever help you out over there?
A. My wife helped me out and then I had some employees there, of course.
Q. What is your wife's name?
A. Freda Walder.
Q. By the way, when were you married?
A. Married in 1940.
Q. Now, do you recall when you moved to 2620 Prospect?
A. Not just offhand, I couldn't say exactly when. I know that I lived there possibly a year or better.
Q. Now, let's go back just a moment to this tavern business and finish that up. Now, you say you used to open the place yourself?
A. Yes, sir.
280 Q. In the morning, is that correct?
A. That is correct.
Q. And did anyone else ever open the place for you?
A. No one ever opened it for me, no.
Q. Was there anyone else that you would ever leave in charge of the place?
A. Not unless it was my wife. I mean occasionally she would be there alone.
Q. How long would you leave her in charge at a time?
A. Only briefly, just to get supplies.
Q. All right. You yourself always handled the cash receipts and cash register and so forth?
A. That is correct.
Q. Was there anyone else employed there?
A. We had a waitress and a cook.
Q. How late would you remain open at night over there?
A. Until 12:30.
Q. Who closed your place of business over there?
A. I closed it.
Q. You would close at 12:30?
A. Yes, sir.
Q. Yourself?
A. Yes, sir.
Q. How long would you usually remain there after you closed?
A. Well, until I finished checking up and seeing that the place was cleaned up. I always left it clean.
Q. How long would it normally take you?
A. About an hour or an hour and a half sometimes, it depends upon how busy we were the previous day.
281 Q. To finish up the day's work?
A. Yes, sir.

BLURRED COPY

Q. That was after all the customers were gone?
A. Yes, sir.
Q. And that happened every night that you were open?
A. That is correct, every night except Sunday.
Q. You were not open on Sunday?
A. No, sir.
Q. And what time would you normally get home then?
A. Well, it was a custom of mine, I would get home around 2:30, because I would always drop the waitress off home and then I would come on over to Missouri.
Q. Did you ever get home earlier than that after closing your business?
A. No, it was always that, or either later.
Q. Almost always that late, is that right?
A. That is right, sir.
Q. Do you ever recall any occasion at all when you permitted someone else to operate the place of business? Do you ever recall any occasion of leaving that place of business in someone else's charge on a night when it was opened?
A. The only time that I ever did leave it was when I—that is after I had leased the place out.
Q. After you leased it? Do you remember what date that was?
A. No, sir, I don't, just offhand.
Q. All right, now, 2620 Prospect, did you move there before January 10, 1951?
282 A. 2620 Prospect, did I move there?
Q. Yes.
A. Yes.
Q. That is a three-story apartment building?
A. Yes.
Q. How many units?
A. It is 4 apartments on each floor, and it is 3 floors.
Q. So there are 12 apartments?
A. Yes, sir.
Q. Any apartments in the basement?
A. No.
Q. Who is that, the janitor?
A. Yes, sir.
Q. Thirteen units in that building, is that right?
A. Yes, sir.
Q. What was your rent there?
A. Twelve dollars a week.
Q. That would be approximately $48.00 or $50.00 a month?
A. Yes.
Q. Now, that is considered a pretty expensive apartment building in your neighborhood, is it not?

BLEED THROUGH— POOR COPY

A. Well, yes, sir; it is.

Q. Mr. Walder, approximately what kind of an income did you receive from the operation of your business over in Kansas City, Kansas?

A. Around $500.00 or $600.00 a month average.

Q. Now, you filed an income tax return all of that time, did you not?

A. Yes, sir.

Q. That would reflect that income, would it?

A. Yes, sir.

283 Mr. AULL. If the Court please, I object to that. The income tax return is the best evidence.

The COURT. Objection. Well, what difference does it make?

Mr. AULL. I don't know.

The COURT. It hasn't anything to do with this case at all.

By Mr. ROPE:

Q. Now, that income of around $500 to $600——

The COURT (interrupting). The Court has sustained the objection, Mr. Rope. We are not concerned about what his income was over there.

By Mr. ROPE:

Q. Did you have any other source of income aside from your place of business?

A. Yes, sir; I was engaged in promoting dances at the Municipal Auditorium.

Mr. ROPE. That also—I don't want to get afield from the line of questioning, but we hope to prove a point by this line of questioning.

The COURT. I don't know what it could be, what his income has to do with whether or not——

Mr. ROPE. If the Court will permit me very briefly to go into it, I think I can show the Court.

The COURT. You are going to have to tell me about it, if you want to come up here, but I am not going to get into this sort of thing here. Come on up here and let's see what you are trying to do.

284 (Whereupon, discussion was had off the record in the presence but out of the hearing of the jury.)

By Mr. ROPE:

Q. I will go back just a moment. You were living, of course, at 2620 Prospect on January 10, 1951?

A. Yes, sir.

Q. And you were at that time operating a business in Kansas to which you have previously testified?

A. Yes, sir.

BLURRED COPY

Q. Now, you have heard the witness for the Government——

The COURT (interrupting). May I suggest, it is 25 minutes of 5. You are going to start now, I presume, to review the various counts of the indictment, that is, the specific charges?

Mr. ROPE. Yes; not in detail, Your Honor.

The COURT. Well, I am just wondering whether or not you want to suspend. How long is it going to take? Evidently we can't finish with this witness tonight.

Mr. ROPE. I will be very frank with the Court, it will take another possibly 15 or 20 minutes.

The COURT. Well, I think we had probably better recess because we can't finish the case tonight, anyhow.

Ladies and gentlemen of the jury, under the instructions heretofore given you about discussing the matter among yourselves or any other person, you will be excused until 10 o'clock tomorrow morning.

285 Thereupon, the Court stood at recess until 10 o'clock a. m. of the following day, to wit, Wednesday, January 30, 1952.

MORNING SESSION, WEDNESDAY, JANUARY 30, 1952

Pursuant to adjournment as aforesaid, at 10 o'clock a. m., Wednesday, January 30, 1952, came again the same parties, present and presiding as before, and the trial continued as follows:

The COURT. Proceed.

SAM WALDER resumed the stand, having been previously duly sworn, and testified further as follows:

Direct examination by Mr. ROPE:

Q. Now, Mr. Walder, I don't want to go over any part of what we have covered yesterday. I do want to find where we left off. You operated a tavern, restaurant in Kansas City, Kansas, from about December 1949, until the spring of 1951, is that right?

A. Yes, sir.

Q. Now, during that period of time when you operated the restaurant did you ever see the witness who testified against you here, Everett Jenkins?

A. Yes, sir, I saw him over there very often.

286 Q. You saw him where?

A. Over at my place of business, the Tea for Two.

Q. Did you ever meet him any place in Kansas City, Missouri, at any time?

A. No, sir, it was always over to the place in Kansas?

Q. Did you ever see him in Kansas City, Missouri?

A. Yes, sir, I have saw him over in Missouri.

Q. Where have you seen him?

BLEED THROUGH– POOR COPY

A. Well, just on the street. You see, it is only a small place where colored people can go, so you practically see any of the colored people out in my section.

Q. You, of course, recognized him on sight from the many times that you had seen him?

A. Yes, sir.

Q. Do you know whether or not he was ever in your apartment building?

A. Well, I have saw him in that apartment building.

Q. Has he ever been in your plac

A. He has never been in my apartment.

Q. There are 13 units in that building?

A. Yes, sir.

Q. Then you haven't had any kind of transaction with him in Kansas City, Missouri?

A. No, sir.

Q. Now, these transactions with him that took place over in Kansas City, Kansas, concerned what?

A. Food and beer, or whatever I sold in the tavern, such as food, candy, potato chips.

Q. How often would he be in your place, just estimate it?

287 A. He was in there several times a week?

Q. Do you recall what time of the day he would generally come in?

A. Well, it was usually during the day, some time he would come in in the evenings.

Q. Now, what would he generally have? I believe I have asked you that. I won't go over that again. I withdraw the question. Now, was this, as nearly as you recall, over a continuous period during which you operated that restaurant-tavern?

A. Yes, sir.

Q. How did he generally pay for what he ordered?

A. Well, he usually always paid cash, that is, up until, oh, after I had been over there about a year I began to extend him a little credit.

Q. Was there any particular reason for that?

A. Well, he come to me once and said that he wanted to have some food for he and his girl friend, and probably a couple of bottles of beer, that he would pay me the following Saturday.

Q. He came in with a girl friend at that particular occasion?

A. Yes, sir. So I mean that was a custom of mine to extend all of my regular customers credit, so he had been a good customer, so I gave him credit.

Q. How long did that procedure of extending him credit continue?

BLURRED COPY

288 A. Throughout after it began, it continued throughout the time that I was operating the business.

Q. You say "throughout the time you operated the business." It began sometime in the fall, did it, or late summer of 1950?

A. Yes, I believe, I don't remember exactly just when I did start extending him credit, but after I had started giving it, it looked like it just opened it up to him and he continued to ask me for credit.

Q. Did he ever pay you?

A. He paid me along, but the last time he didn't pay me. It was in the later months.

Q. What was the limit of the credit that you did extend him over there?

A. Well, $15.00 was the most that he ever owed me.

Q. Did you ever ask him to pay his bill?

A. Yes, I started to, I asked him several times to pay. I remember specifically once, his bill began to keep getting higher and so I asked him, well, I asked him on several occasions, I said, "When are you going to pay something on this? It is getting pretty big."

Q. Did he ever have a girl friend present when you asked him to pay?

A. Yes, he had a girl friend but, of course, I never asked him in front of the girl friend. I wouldn't embarrass him.

Q. So far as you know, that wasn't overheard, is that right?

288 A. Yes.

Q. Now, did he ever pay his bill to you?

A. Well, not the last bill. He still owes me a bill now.

Q. Will you tell the Court and jury what happened, if anything, the last time you had any relation with Everett Jenkins?

A. Well, his bill had become pretty high so I went to him, I mean I told him, "Well, Jenkins," I said, "your bill is getting rather high. You are going to have to pay something on this." So he said, "Well, if you don't give me any further credit, I am not going to pay you anything and I am not coming back in your place any more." So at that particular time, well, we had kind of a big argument and he said he wasn't coming in the place any more and used a lot of vile language, and he said if it was the last thing he would do he would fix me for that, and he wasn't going to let any of his friends come in my place any more.

Q. Do you know who he referred to?

A. Well, no, I don't.

Mr. AULL. I object to that.

The COURT. Yes, objection sustained. It is not important.

BLEED THROUGH– POOR COPY

By Mr. ROPE:

Q. Anything else take place at that time?

A. Well, when he was leaving he just slammed the door and said he would never be back and nothing else occurred.

Q. He still, of course, hasn't paid that bill?

A. No, sir.

290 Q. Do you know what he meant when he said he would fix you or something?

Mr. AULL. I object to that as calling for a conclusion on the part of the witness.

The COURT. Overruled.

A. I have no idea. I didn't have any idea at all what he meant when he said he would fix me, not until, I imagine, yesterday.

Q. Now, I will ask you just this one thing. Have you ever seen Everett Jenkins anywhere since that occasion?

A. Yes, I have saw him since.

Q. Ever been near him?

A. Not near him. In fact, he stayed as far away from me, just seemed to avoid me.

Q. Where have you seen him?

A. I have seen him on 12th Street, 18th Street, streets that colored people frequent.

Q. Has he ever been out to your building?

A. No, I haven't never saw him out there.

Q. He may have been there?

A. He may have been there, it is 13 units in that building.

Q. Now, before we go any further, tell the Court and jury whether or not you own a dog. There has been quite an issue made here about a dog.

A. Yes, sir, I own a dog. I own a Doberman Pinscher.

Q. That is not a Boxer, that is a Doberman Pincher?

291 A. That is a Doberman Pinscher.

Q. How long have you had that dog?

A. I have had him several years. I am very fond of dogs, I have always had a dog.

Q. I mean this particular dog.

A. This particular dog, I have had him, I would imagine, for 2 or 3 years.

Q. That is a large dog?

A. Yes, it is a very large dog.

Q. Is that dog of yours kind of a trade-mark with you around the neighborhood?

A. Yes, sir, it is.

Q. Where was the dog kept?

A. He was kept in my apartment.

Q. All the time?

BLURRED COPY

A. Yes, sir.

Q. Now, will you just tell the Court and jury what your custom was, if anything, with reference to the dog.

A. Well, it was customary when I come home——

Mr. AULL (interrupting). I want to object to any custom in regard to this dog.

The COURT. Yes, we are not dealing in customs we are dealing in factual situations, dates and details, not customs.

By Mr. ROPE:

Q. Well, I will ask you if it is charged here, as it is, that you walked this dog at 1:30 or 2 a. m. the night of January 10, 1951, will you have any reason to deny that?

A. I wouldn't have any reason to deny that I walked him, because I always walk him at night when I come home because he stays in the office and I have to carry him out. He is house
292 broken and I have to carry him out, but I wouldn't say that it occurred around 1:30, because I know it would have to be after 2.

Q. Why do you say that?

A. Well, because I am never home before that time.

Q. So that in all probability you certainly did walk your dog the night it is alleged?

Mr. AULL. If the Court please, I object to all probabilities.

The COURT. Well, it doesn't make any difference, he said he probably did.

The WITNESS. Yes, sir.

By Mr. ROPE:

Q. Now, on this night of the 10th of January, 1951, did you see Everett Jenkins?

A. No, sir, I did not.

Q. And you, of course, didn't see Everett Jenkins at your apartment building?

A. No, I didn't.

Q. Did you see him anywhere else at all?

A. No, I did not.

Q. He could have been in your building that night, though?

A. He might have been in the building.

Q. You wouldn't comment on that because you don't know?

A. I couldn't say.

Q. Now, let's discuss for just a moment, the witness here, Henly Taylor. Do you know Henly Taylor?

A. I know him casually, I mean I have saw him around the streets.

293 Q. You know who he is?

A. Yes.

BLEED THROUGH— POOR COPY

Q. Have you ever had any kind of relationship whatsoever with Henly Taylor?

A. No, I haven't ever had any relationship with him.

Q. Have you ever had any kind of deals with Henly Taylor?

A. None whatsoever.

Q. He never came over to your place in Kansas, did he?

A. No, sir.

Q. At the times charged here, the first time charged here, which it is alleged by the Government that you had a dealing with this witness, Henly Taylor, April 11, 1951, you knew Taylor at that time?

A. Well, I knew of him, yes.

Q. Did you know where he was working?

A. I have never known him to work in his life.

Q. As far as you know?

A. That is right.

Q. Have you ever had any kind of social association with him?

A. None whatsoever.

Q. In other words, your sole contact with him has been knowing him by sight, is that right?

A. That is right.

Q. Did you know his name?

A. Well, not his full name. I just, you know, when you are in places you hear people call people names, and especially in such a small locality as we have.

294 Q. He was a character who was seen around, is that right?

A. That is right.

Q. Now, he has continually referred to you from this witness stand as "Sam" in a very informal and casual manner. Were you ever on a basis with him so that he called you Sam and you called him Henly or something to that effect?

A. No, I didn't even know his first name.

Q. He probably knew yours?

A. Yes.

Q. Did he ever address you as Sam, come up and talk to you?

A. I don't ever recall him having addressed me one way or another.

Q. Now, to digress here for just a moment, you suffered some sort of an injury, did you, on or about March 7, 1951?

A. Yes, sir, I was in a taxicab accident.

Q. Will you describe what happened to you there?

Mr. AULL. If the Court please, I am going to object to what happened. If he wants to state about his injuries, that is all right.

The COURT. Well, I presume——

BLURRED COPY

Mr. Rope. We are confining it, Your Honor to——

The Court. The question is subsequent to the injury. When was the date?

A. It was March 7th.

By Mr. Rope:

Q. I don't want you to tell how the accident happened but what happened to you?

295 A. Well, I had a sprained ankle. I mean that is what the doctor said it was, a sprained ankle.

Q. All right, what was done?

A. Well, he put a small cast on my ankle and——

Q. Was it a case or tape or what?

A. Well, I don't know what it was. I am not very familiar with the medical terms of whatever it was. It was bound up.

Q. It wasn't a plaster cast?

A. No, it wasn't a plaster cast.

Q. Who did that?

A. Doctor Miller.

Q. And was that on the date of the injury?

A. Yes, sir, he came to my apartment that morning.

Q. Now, did you get around at all after that date?

A. Not without the aid of a crutch. That is, until, I would say, about three or four weeks I had to have aid of this crutch.

Q. Did you have any further aid of anything after that?

A. After that I used a cane for, oh, I would say for another month or so.

Q. Were you ever about and around without the aid of one or the other?

A. No, sir.

Q. During that period of time?

A. No, sir.

Q. Do you recall when you were finally released from the doctor's care?

A. Well, I think it was around the last of April. I think it was, in fact, I am sure it was around April 29th or 30th, it was

296 the last time that I went to his office for treatment.

Q. Were you able to get around on April 11th, and April 12th without the aid of something?

A. No, I was not.

Q. Do you recall whether it was a crutch or a cane?

A. It was a crutch at that time.

Q. Now, during that period of time, relating specifically to the period of time around April 11th and April 12th, where were you spending most of your time?

A. In the apartment.

BLEED THROUGH– POOR COPY

Q. Were you any longer in business in Kansas?

A. No, I was not.

Q. When had you left that business?

A. Well, I didn't actually operate the place. I leased the place early in '51 and I had no further, just actively engaged in it, although I still had an interest in it and went over there, but I didn't own it at that time.

Q. So that you were out of that business at the time it is alleged in here, April 11th and 12th at those time?

A. Yes, I was out of business there.

Q. Now, Mr. Walder, just look at this jury now and tell them whether you ever went out of your house to meet this witness, Henly Taylor.

A. So help me God, I have never met the man any place.

Q. Now, you knew him by sight at that time?

297 A. Yes, I knew him.

Q. And that is the same man who testified from this witness stand?

A. That is right, sir.

Q. And said that you had met him on April 11th and April 12th at various taverns and bars for the purpose of carrying on this narcotics transaction?

A. Yes, sir.

Q. Did he ever come to your place to meet you?

A. He was at my apartment on one occasion. He never did get in. I recall the incident. It was during the time that I was injured, he come up and knocked on the door and my wife went to the door and asked him what he wanted.

Q. Pardon me just a moment. What time of the evening was that, do you remember?

A. Well, it was in the evening. I don't know exactly what time it was, but it was in the afternoon.

Q. Do you remember approximately the date of that?

A. Well, no, I can't say exactly the date because I know it was during the period I was injured, but as to the date, I couldn't. I know it was in the early part of March—I mean the latter part of March. But as to the date, I can't recall.

Q. Where were you when he came to the door?

A. I was laying on the couch.

Q. All right, go ahead and tell the jury, now, what happened.

A. Well, he came to the door and my wife, she went and

298 answered the door and asked him what he wanted. And he said he wanted to see me, so I got my cane and went over to the door and asked him what he wanted. First I thought he was drunk, so I asked him, I says, "What is it." He says, "Well, I am in a bad shape and I need to borrow $10.00." He said, "I

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haven't got any other place I can get it and I want $10.00." I said, "Well, I am not in a position at this time to loan anybody anything." He said, "Well then, you lend everybody, you loan everybody else some money, why can't you loan me some money?" I said, "I am not in a position to loan anyone anything." He said, "You are going to let me have $10.00." I said, "I am not going to let anyone have anything."

Q. Let me interrupt you just a moment. I don't want to break the continuity of this, but do you recall exactly what he said to you or why he said he needed $10.00?

A. Well, he said he had heard that I loaned all the others some money, why couldn't he get it.

Q. I don't think you quite understood my question. Was that the whole conversation with reference to the loan or was it not? If it was, tell——

A. (Interrupting.) Well, that is about all that I can recall.

Q. All right, go ahead now and continue. Tell the jury.

A. So he made efforts as if he was coming in the apartment, so I kind of stepped back against the door and took my cane, I mean my crutch and kind of swung at him and I think I hit
299 him slightly on his hand or something, and he said, "I will be back." So I never saw him anymore for, oh, several days, and again he come up. This time my wife went to the door again and she told him if he didn't get away from there she was going to call the police.

Q. That conversation that took place there, was that in your presence?

A. Yes, it was in my presence.

Q. Did you yourself go to the door at that time?

A. No, I didn't get to the door.

Q. You know that it was Henly Taylor?

A. Yes. I mean the couch fit, where you open my door you can naturaly see whoever is at the door.

Q. You were still somewhat laid up, at that time?

A. Yes.

Q. Did you hear what Taylor said that time that he came around?

A. After my wife saw who it was and told him to get away from there, she just slammed the door, that was the end of the conversation.

Q. At that time, directing your attention back to the first time that he was around the place where you said you took a swing at him and pushed him, what was it that you did with the crutch?

A. Well, I just swung at him with the crutch. I mean he was making an attempt to come in my apartment.

BLEED THROUGH– POOR COPY

Q. Was that the reason for it? I mean it wasn't an attack upon him by you?

300 A. No, sir, he was attempting to come in the apartment, as if he was going to come in and carry the conversation, and at the time I was rather nervous because of this injury, I imagine, and I just swung at him before I knew it.

Q. Could you tell what his physical condition was at that time?

A. Well, he appeared to me as if he might have been drunk, I don't know.

Q. Did he appear ill?

A. Well, yes, he was in a drunken condition, apparently, to me. I don't know what was wrong with him but he appeared to be drunk.

Q. You are unable to say any further about that?

A. Yes, sir.

Q. He looked the same then as he does now in this courtroom?

A. No, sir.

Q. Does he look better now?

A. He looks much better.

Q. Do you recall what the exact words were that were said to you when he left on the first or second occasion?

A. He said, in effect, that he would be back, that he would get even with me.

Q. Do you know what he meant by that?

A. No, sir, I have no idea.

Q. Now, have you ever had any other kind of association whatsoever with the witness, Henly Taylor?

A. No, sir.

Q. Other than those occasions?

301 A. No, sir.

Q. Ever had any kind of dealings with him of any sort?

A. I have never had any type of dealings with Henly Taylor.

Q. And if Henly Taylor charges from this witness stand that he visited you in your apartment on May 8th of 1951 is that a correct statement?

Mr. Aull. If the Court please that is an improper question. That is a jury question.

The Court. Well, overruled. Go ahead.

By Mr. Rope:

Q. You may answer that.

A. Would you ask that question again?

Q. If Henly Taylor charges or had charged from this witness stand that he visited you in your apartment——

The Court (interrupting). Well I am going to sustain the objection to the form of the question, Mr. Rope. You have a right to ask him, but I think the question is improperly framed. You

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can direct his attention to the particular time and occasion. As to what is charged by him that is not proper.

Q. On May 8, 1951, then Henly Taylor did or did not come to your apartment?

A. He has never been to my apartment, inside.

Q. He may have been in the building?

A. He has been in the building.

Q. You know he has?

A. Yes, I have saw him in the building.

302 Q. Other than those occasions you have never had any other relationship with him?

A. No, sir.

Q. Mr. Walder, in closing here will you tell this jury and this Court once more whether you have ever had any dealings with narcotics, with these two informers for the Government, Henly Taylor or Everett Jenkins, or any other party?

A. I have never had any dealings with them.

Mr. ROPE. You may inquire.

303 Cross-examination by Mr. AULL:

Q. Now, first of all, Mr. Walder, let's talk about Henly Taylor. You say you are a casual friend of his?

A. I didn't say "a casual friend." I said that I was a casual acquaintance. I mean I have seen him around in the colored neighborhoods.

Q. Tell this jury how he happened to know where you lived.

A. I don't know that he—don't know exactly how he knew my apartment number. My number is on the bell there.

Q. Do you know how he happened to know what building you lived in?

A. Well, as I stated, he is frequently in that building. There are 13 units in the building.

Q. You have seen him there frequently?

A. Yes, I said I have saw him in the building on numerous occasions.

Q. Ever have any dealings with him at all?

A. None whatsoever, sir.

Q. Other than what you have related about him being up there a couple of times?

A. Yes, sir.

Q. What was your telephone number at that time?

A. I think it was Linwood 9270, I really don't recall.

Q. All right, I am going to ask you if you ever had a telephone by the number of 2372?

304 A. I think I did.

Q. I want you to tell this Court and jury whether it was an unlisted number.

BLEED THROUGH— POOR COPY

A. Well, I was in the amusement business and I had a tavern and very frequently I didn't get to bed until late at night, and I slept late in the morning and I just didn't publish it because I didn't want a lot of calls.

Q. Then you had two numbers?

A. I had a telephone at my place of business.

Q. I am talking about your home.

A. No, I did not have two telephones at my home.

Q. That was the only telephone you had at your home, was a silent number?

A. Yes.

Q. Tell this jury how it was that Henly knew what the telephone number was.

A. I don't know if he knew the telephone number.

Q. Did he ever talk to you on the telephone?

A. He never talked to me.

Q. When was that telephone disconnected?

A. I don't recall.

Q. What are your acquaintances in Chicago?

A. What are my acquaintances there? I have operated several businesses there.

Q. Back in that time, 1951?

305 Mr. ROPE. Let me interrupt just a moment, if it please the Court. Now, we have gone into this man's past before. However, we object to this question as being entirely irrelevant, immaterial, and not tending to prove or disprove any issues. The issues that are concerned are January 10, April 11, 12, and May 8, 1952.

The COURT. Overruled.

By Mr. AULL:

Q. What were your connections with Chicago back in January, 1951?

A. Be more specific.

Q. Business relations?

A. Well, my son lives there now. In fact, I have a family there. My sister lives there.

Q. Frequently make phone calls up there?

A. Yes, I call to make inquiry about my son frequently.

Q. You testified you were during that time, that you were making between $500.00 and $600.00 a month, is that correct, when you went out of the tavern business?

A. From the Tea for Two. That was my income from the Tea for Two.

Q. When was it you had this telephone disconnected.

A. I don't recall.

Q. Approximately?

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A. I don't recall, sir.
Q. What year was it disconnected?
A. Well, in 1951, I think it was.
Q. The first part or latter part?
A. I don't recall.
306 Q. You have no idea a year ago when you had a telephone disconnected, is that your testimony?
A. That is, sir.
Q. Tell the jury why it was that when you had it disconnected you didn't pay your bill?
A. I was out of the city for awhile and when I returned the phone was turned back on.
Q. Have you ever paid your bill?
A. Have I ever paid what bill?
Q. Your telephone bill?
A. Why certainly I have.
Mr. ROPE. Whether or not this man did pay his telephone bill or didn't pay his telephone bill is not an issue in this case, and it is entirely irrelevant, doesn't prove or disprove any issue here whatsover. It just clouds up the proceedings.
The COURT. Yes, the objection is sustained. You can go into the question of the silent number and that sort of thing. Whether he paid his bill or didn't, I don't think that is material. That might be a circumstance for the jury to consider whether he paid his bill or not, unless you have some reason for it which the Court doesn't see now.
Mr. AULL. The only purpose that I made that offer for was in line with testimony that was previously given about his income.
The COURT. Well, his income doesn't have a thing
307 in the world to do with this case. It just got in, but it has no bearing, whether he had 15 cents or fifteen million dollars, it is the guilt or innocence in this case. All right, go ahead.
Mr. AULL. Very well, sir.

By Mr. AULL:

Q. Now, let's talk about your tavern. When did you sell that tavern over in Kansas City, Kansas?
A. As to the date I can't be specific without the records, sir, and I don't have my records here.
Q. When did you open the place?
A. Again I couldn't be specific without referring to my records.
Q. Approximately when?
A. As early, as close as I can recall, I think it was the last part of '49.
Q. How long did you operate that business?

BLEED THROUGH— POOR COPY

A. I operated it up until 1951.
Q. When?
A. To be specific, sir, I couldn't say without reference to the records.
Q. Whom did you lease that business to when you stopped?
A. Paul Gray.
Q. Now, prior to the time you leased that to Paul Gray, who operated the business?
A. My brother.
Q. Your brother. I thought you operated it?
308 A. You said prior to the time I operated it, I understood your question.
Q. Prior to the time you leased it to Paul Gray, who operated the business?
A. Paul Gray.
Q. When did your brother operate it?
A. Prior to the time I bought it from him.
Q. When did you buy it?
A. As I said before, I think it was the latter part of May.
Q. What is your brother's name?
A. Burt Hendricks.
Q. Whose name was the beer license kept in over there?
A. Burt Hendricks.
Q. Why wasn't it in your name?
Mr. ROPE. Now, if it please the Court, just a moment. The fact of whose name the beer license is in, or the reason why it wasn't in his name, is again not an issue in this case and is entirely irrelevant and entirely foreign to the issues in this case.
The COURT. Overruled.
Mr. AULL. He made the direct statement it was in his name, Mr. Rope.
Mr. ROPE. All right.
The COURT. Overruled, go ahead.

By Mr. AULL:

Q. Now, I want you to tell this Court and jury why it was that when you were operating the tavern over there that the license was in your brother's name.
A. Well, when I first came here they were in his name
309 and I never did transfer them.
Q. Wasn't that license renewed on January 3, 1950?
A. Yes, sir.
Q. Who renewed it?
A. Well, my attorney renewed it. That is, he filled out the application for it.
Q. Why was it renewed in your brother's name?

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A. Well, I don't know. I mean there never was any reason why I should change it.

Q. Who paid the license fee?

A. I did.

Q. You saw the license number in your brother's name, did you?

A Why, certainly.

Q. You made no objection?

A. No.

Q. Now, if the beer license was issued to Paul Gray on January 9th—do you know when the beer license was issued to Paul Gray?

A. I had a discussion with him about him taking out his new license and I think it was shortly after the first of the year, I think it was during the first week of the year.

Q. What year?

A. Of '51.

Q. The first week of '51?

A. I think so.

Q. That was prior to January 11, 1951, is that correct?

A. Yes, sir, it was.

Q. By the way, what other names do you go by?

A. What other names do I go by?

Q. Other than Sam Walder?

310 A. Well, they call me "Red."

Q. I mean complete names.

A. I would rather you would be more specific.

Mr. ROWE. Now, if it please the Court, at this time we would like to object again to the question as entirely irrelevant and immaterial, and not tending to prove or disprove any issue in this case. This man is on trial as the defendant, Sam Walder. He has given and continued to give that as his name. If he does have any other name——

The COURT. Overruled.

Mr. AULL. I want him to tell me what other name he goes by or has gone by.

The WITNESS. You mean any other name that I have went under?

By Mr. AULL:

A. Complete, full name?

A. I went under the name of George Hendricks.

Q. I want you to tell this Court and jury why you went by the name of George Hendricks?

A. Well, early in my life my mother, who was not married to my father, well, his name was Hendricks, and they gave me that name. After I come of the knowledge of what had occurred I went back to my mother's name. In fact, I never stayed with any of the Hendricks and I never associated with them very much.

BLEED THROUGH— POOR COPY

Q. When was it that you changed your name?

A. I don't recall.

311 Q. In 1951?

A. No, it wasn't in 1951.

Q. Did you use the name of George F. Hendricks at Billings, Montana, on the 4th of December 1951?

A. No, sir.

Q. Were you arrested by that name?

Mr. ROPE. Now, just a moment. If it please the Court, I would like to object to that statement on the part of counsel at this time. He knows better. A statement of that sort is so highly inflammatory and prejudicial that no caution and no charge by the Court to the jury can cure that defect, and we ask at this time that the jury be discharged.

The COURT. The objection to the question will be sustained and the request to discharge the jury will be overruled.

Mr. ROPE. If it please the Court, counsel for the Government knows better than to make such a statement.

The COURT. The objection is sustained, if you will sit down and behave yourself again.

By Mr. AULL:

Q. Will you state to this Court and jury, Mr. Walder, whether or not you were sentenced to a term of 1 to 5 years for grand larceny in 1935 in the State of Kansas?

A. How was that again, sir?

Q. Will you state to the Court and jury whether or not you were sentenced to a term of from 1 to 5 years for the crime

312 of grand larceny on the 6th of June 1935?

A. I couldn't say that I was, sir. I could say, however, that during my—while I was a kid that I did go to reform school.

Q. How old were you?

A. I don't recall, sir.

Q. When were you born?

A. I was born August 14, 1915.

Q. Then in 1935 you would have been 20, wouldn't you?

A. Yes, sir, 19 or 20.

Mr. ROPE. Now, if it please the Court, I would like to get the record straight here. I should like to know whether or not my client is denying this charge and if he is, there has never been an answer to this question yet. Then we should like to have the record produced as the best evidence.

Mr. AULL. We will ask him if he will deny it.

By Mr. AULL:

Q. Do you deny that that is correct?

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A. I said I couldn't answer that question, sir, because I don't know.

Q. You will admit that you were sentenced, is that correct?

A. I have been in the reform school.

The COURT. Now, just a minute. You know whether you were convicted or whether you weren't?

A. Yes, sir.

The COURT. We don't want you to evade any questions. You know whether you were or weren't. The Court is not going
313 to tolerate this. If you don't remember, say so, but you are not going to evade the question by refusing to answer. Now, you know whether you were or whether you weren't.

A. Sir, I admitted that I had been to the reform school, but as to the date I don't remember.

The COURT. I am not questioning, but let's have an answer one way or the other, whether you were or whether you weren't. Whether you remember it, that is a different situation. You might remember. But you do know whether you were convicted or whether you weren't.

By Mr. AULL:

Q. Now, Mr. Walder——

Mr. ROPE (interrupting). Just a moment. If it please the Court, there is still an unanswered question.

The COURT. Ask him again, Mr. Aull.

By Mr. AULL:

Q. I will ask you again whether or not, I will make it general, during the year 1935 you were sentenced to a term from 1 to 5 years in the State of Kansas for the crime of grand larceny?

A. I don't remember, sir.

Q. Do you deny that you were ever sentenced out there for that?

A. I do not deny that I was never convicted and sentenced.

Q. You were convicted in Kansas?

A. I said I did not deny, I said I had been to the reformatory when I was a kid.

Q. Will you admit you were convicted of a crime of grand larceny?

Mr. ROPE. If it please the Court——

314 The COURT. The objection is overruled, if you are going to object to it, because it is a perfectly fair question.

Mr. ROPE. Your Honor, I am not going to object to the question, but is it possible that the witness does not understand or differentiate between a conviction and a juvenile offense and a conviction in the District Court in the State of Kansas.

Mr. AULL. There is no juvenile offense.

BLEED THROUGH– POOR COPY

The COURT. The question is perfectly plain. It is a question of grand larceny.

Mr. ROPE. Well, I understand it, Your Honor.

The COURT. And I am sure the witness understands, too.

Mr. AULL. Will you read the question, Miss Miles, please?

(Whereupon, the following question was read by the reporter: "Q. Will you admit you were convicted of a crime of grand larceny?")

The COURT. Do you understand the question?

A. Yes, sir.

The COURT. What is it, yes or no, what is it? It isn't where you served, it is a question of whether or not you were convicted of that offense.

A. Well, I wasn't tried for it.

By Mr. AULL:

Q. I didn't ask if you were tried. I asked you if you were convicted for it.

315 A. I did time there, sir.

Q. Were you convicted of the offense of grand larceny?

A. I imagine I am convicted. I am not familiar with the laws.

Q. After the trial you served time, is that correct?

A. Yes, sir.

Q. From one to five years?

A. Yes, sir.

The COURT. I think that clears it up.

Mr. AULL. Yes, sir.

By Mr. AULL:

Q. Now, I believe that you testified on direct testimony that you have never had anything to do with narcotics, is that correct?

A. Yes, sir.

Q. Ever possessed any?

A. No, sir.

Q. Or had any in your possession?

A. Not in my possession, no, sir.

Q. Ever sell any?

A. No, sir.

Q. Ever buy any?

A. No, sir.

Q. Where were you living in February, 1950?

A. I think I was living at 2620 Prospect.

Q. What apartment?

A. Apartment 3.

Q. Where was that?

A. It is on the second floor.

Q. Do you know Mr. Witt and Mr. Follmer?

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A. I have saw them before.

Q. Do you recall going to your apartment with them on the evening of February 19th or early in the morning of February 20, 1950?

316 Mr. Rope. Now, if it please the Court, again I wish to object to this statement on the part of the witness. In the first place, any previous relationship which he wishes to inquire about with these officers is not within the issues of this case whatsoever. I think that is certainly true. He is referring to a date back in 1950.

The Court. The witness has testified today on cross examination. He testified on direct examination yesterday that he had never had anything to do with narcotics other than a doctor's prescription. I assume from what the Court must know, what counsel for the Government has in mind, and I think for that purpose it is a perfectly legitimate question.

Mr. Rope. Well, I will withdraw the objection until I hear the rest of the question.

The Court. That is all right, if you want to argue the question we will excuse the jury and let you make the argument about it. I don't want to prejudice your client's case about it, but I say the Court must know, and in connection with the matter I assume what counsel has in mind. So counsel ask the question and then if you want to argue it, your legal phase of it, the Court will hear you out of the presence of the jury.

Mr. Rope. Yes.

By Mr. Aull:

317 Q. I think the question—I will rephrase the question. I will ask you whether or not the evening of February 19th or early in the morning of February 20th, in the company of Agents Follmer and Witt of the Narcotics Bureau here in Kansas City, Missouri, you went to your apartment at 2620 Prospect here in Kansas City, Missouri?

A. Did I go there with them?

Q. Yes.

A. Yes.

Mr. Rope. Now, if it please the Court, are we to understand at this time—I am asking a qualifying question here—that there was an arrest? That you were charging an arrest?

Mr. Aull. No, sir.

Mr. Rope. All right.

Mr. Aull. I am not charging an arrest, that is not what I am after.

The Court. Go ahead and ask your question and let's see what it was.

BLEED THROUGH— POOR COPY

By Mr. AULL:

Q. Now, when you arrived at that apartment, I will ask you, Mr. Walder, whether or not you turned over to them 1 grain of heroin?

A. I did not.

Q. You did not, you deny that categorically?

A. Yes, sir.

Q. Now, I will ask you if on that occasion prior to arriving you stated to these officers that should they find any narcotic
318 drugs in this apartment, that they were your property and your wife, Freda, was in no way responsible for any drugs which might be found?

A. I don't recall any such conversation.

Q. Do you deny that?

A. I deny.

Q. You recall going out there with the officers?

A. Yes, sir.

Q. Do you recall any narcotics being obtained at that time?

A. I do not.

Q. Do you deny it?

A. I deny it.

Mr. ROPE. Now, if it please the Court, are you attempting—is counsel for the Government——

The COURT. If you want to excuse the jury, if you want to discuss it—

Mr. ROPE. All right, I should like to do so.

The COURT. Let the jury be excused from the courtroom, while we discuss this question, if you want to present a question of law.

(Whereupon the jury was excused from the courtroom, and the following proceedings were had out of the presence and the hearing of the jury:)

The COURT. Go ahead, Mr. Aull.

Mr. AULL. If the Court please, I would like to make my showing of proof here on this.

The COURT. You can suggest to the Court and the Court
319 will pass on it out of the presence of the jury.

Mr. ROPE. If it please the Court, one thing I desire to ask of the Court, I have an objection, in other words, to make to the question that he has asked.

The COURT. I understand. The Court hasn't passed on that yet. So that counsel may be fully advised, I presume you are going to ask about the matter, and so that we will understand each other, the District Attorney can say what he proposes to prove and you can make your objection and the Court will indicate to you what is to be done when the jury comes back. It will either be sustained

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or overruled, and then you can make your objection at that time for your record. Proceed, Mr. Aull.

Mr. AULL. As to that point, I intend to prove that there was on that occasion found one grain of heroin in his apartment which he voluntarily turned over to the officers.

The COURT. There were two officers?

Mr. AULL. There were two officers and four deputies.

The COURT. The Court remembers this matter because it was before the Court at one time.

The COURT. And I have before me the decree in which the Court ruled at that time.

(Whereupon, discussion was had off the record.)

Mr. ROPE. Now, if it please the Court, it is assumed here——

320 The COURT (interrupting). If you hadn't gone into it on direct examination, if you hadn't asked him whether or not he had ever had anything to do with narcotics or any connection with them, then the Court would have been compelled under the law to sustain this objection because you can't cross-examine a defendant particularily on matters that were not gone into on direct examination. But you opened it up by asking whether or not he had ever had anything to do with narcotics and as a result if that answer is "No," then it becomes in the opinion of the Court, it becomes competent to show that he did have something to do, that he did possess narcotics. I think you could show a prior sale of narcotics in order to impeach him as to that particular statement. It goes to his credibility and to the impeachment of his statements, and the jury considering all of the testimony and the weight that shall be given to his testimony. That is the theory of the Court, so that counsel may have in mind what it is.

Mr. ROPE. Certainly. Well, we appreciate the position of the Court and assume that the Court is ruling that that is admissible under a type of multiple admissibility rule or alternative admissibility rule. Are we correct in making that assumption where it would not be admissible to prove——

The COURT. The Court will say to the jury finally, the Court will say to the jury that this testimony is not admitted for the purpose of showing the guilt of the defendant with

321 respect to these particular sales, but it is simply that he has made a statement and that may be taken into consideration in connection, it is simply by way of impeachment as to the credibility of the witness, and whether or not he is telling the truth and telling the facts on the witness stand generally. That is the purpose of any sort of impeachment. That is, you can only impeach on important things. He said that he never had any-

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thing to do with it. Now, if he did, that is impeachment on a material matter, as the Court understands.

Mr. ROPE. This is the position of the defense, Your Honor, that is, that in this case there was necessarily an arrest, and this man was in the custody of the police at the time, the federal authorities, and evidence was taken from him which the Court subsequently ruled was taken from him in violation of his constitutional rights, is the way I understand it.

The COURT. That is right.

Mr. ROPE. Now, that being the case, if that evidence was incompetent and inadmissible at that time to prove this man's guilt or innocence and was expressed by the Court, then that evidence is now at this time again totally incompetent and inadmissible, and it is again in violation of this man's constitutional rights to attempt to use evidence of that transaction for the purpose of impeachment in this case when that constituted no evidence whatsoever in a court of law. That is the position of the defendant. That is not evidence.

322 The COURT. All right, you have made your point now. The Court is going to admit the evidence on the theory, as I say, that he has denied that he ever had anything to do with narcotics and is solely for that purpose only. The Court will so state to the jury when the time comes to charge the jury.

Bring the jury in.

Mr. AULL. Prior to that there is an additional question I am going to ask relative to certain other admissions that were made by this defendant relative to purchases of dope that he had made at Chicago from numerous dealers up there.

The COURT. All right.

Mr. AULL. Also in one-ounce quantities.

The COURT. I think it is pretty competent in view of what he said.

Mr. ROPE. Any previous admission we acknowledge.

(Whereupon, discussion was had off the record, following which the jury returned to the courtroom and the following proceedings were had:)

The COURT. Proceed.

By Mr. AULL:

Q. I will ask you, Mr. Walder, whether or not when you went to your apartment at 2620 Prospect in Kansas City, Missouri, either on the late evening of February 19th or early on the evening of February 20th, in company with Narcotic Agents Witt and Follmer and two deputy sheriffs, whether or not at that time, whether or not you told them that should they find any

323 narcotic drugs on the premises that they were your prop-

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erty and that your wife, Freda, was in no way responsible for any drugs which might be found?

Mr. Rope. Now, if it please the Court, I believe that the defendant would like to make objection at this time to that question as being prejudicial, inflammatory and an attempt to prove prior arrest by innuendo, and it is a mater constituting no evidence whatsoever in this case. It is entirely immaterial, incompetent and irrelevant and places such a prejudice in the minds of this jury against this defendant that no charge on the part of the Court can possibly cure it, and the defendant asks at this time that the jury be discharged.

The Court. The objecion will be overruled in both instances and the Court will say that the testimony, the question is being permitted, and if there should be further testimony concerning it, it will be admitted solely by way of impeachment of the witness' statement that he had never had anything to do or any connection with narcotics. It is not for the purpose of determining the exact guilt or the innocence of any of these acts in this information, but in view of the witness' testimony, the defendant's testimony that he had never had anything to do with narcotics except, as the Court recalls the language, "as prescribed by a physician." This testimony is being admitted in that connection. In view
324 of his denial of that, the objection will be overruled.

Proceed.

The Witness. What was the question again?

By Mr. Aull:

Q. Whether or not on the late evening of February 19th or early February 20, 1950, that you, in company with Agent Follmer and Agent Witt of the Narcotics Bureau, together with deputy sheriffs of Jackson County, went to your apartment at 2620 Prospect and on the way to that apartment that you made the statement to them that should they find any narcotic drugs there, that the same were your property and that your wife, Freda, was in no way responsible for any drugs which might be found?

A. I made no such.

Q. You made no such statement. Now, I will ask you, Mr. Walder, whether you recall visiting the office of the Bureau of Narcotics on February 24, 1950?

A. I do not.

Q. I will ask you at that time whether or not you made this statement in substance to Agents Follmer, Witt and Shattuck——

Mr. Rope (interrupting). If it please the Court, I didn't object in this language to the last statement, but if counsel for the Government purports to be reading a statement by this defendant, we ask that that entire statement be introduced in evidence, if there is such a statement.

BLEED THROUGH– POOR COPY

Mr. AULL. If you want us to introduce the record I will be glad to read it.

325 Mr. ROPE. The statement that is read in it?

The COURT. The Court has no written information as to whether or not there was a written statement.

Mr. AULL. There was none. If you want it before you——

Mr. ROPE. There is no written statement.

The COURT. Well, if there is no written statement, go ahead.

By Mr. AULL:

Q. Referring to the question that on the 24th of February, 1950, you made, in substance, the following statement to Agents Follmer, Witt, and Shattuck at the office of the Bureau of Narcotics in this building here in Kansas City, that you had previously purchased heroin from several persons in Chicago in rather large amounts, and explained that you meant by that from one to two ounces at a time, and that you were well acquainted with the big narcotic peddlers of Chicago, and that you were solid with these contacts; further, that if you were to assist the Government in the purchase of heroin by you, you would have to have not less than one ounce as you were known as a wholesale dealer and it would not be logical for you to attempt to purchase heroin in quantities of less than one ounce. Did you make that statement?

A. May I answer that question in full?

Q. You certainly may.

A. I was approached by Mr. Follmer and asked if I would be a stool pigeon and I told him——

326 Q. (interrupting). I am asking you——

The COURT (interrupting). Did you make this statement?

A. No, I did not make that statement. He approached me and asked me that.

The COURT. Now, make such explanation as you want to make in this connection with it.

The WITNESS. Did you say you——

The COURT. I said if you can, if there is any explanation you want to make——

A. I was approached by Mr. Follmer, who asked me if I would assist him in making some buys and I told him I couldn't do it because I didn't know any. He said if I would, he would give me a break and I wouldn't have to be doing any time for the charge they were charging me with.

By Mr. AULL:

Q. I am going to ask you, Mr. Walder, whether or not you voluntarily came to the office of the Bureau of Narcotics on February 24, 1950, without any solicitation and make the statement that I have just stated?

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A. I did not.

Mr. AULL. You may inquire.

Redirect examination by Mr. ROPE:

Q. All of this questioning that has been going on here about several purported statements made by you—first I will ask
327 you whether you ever made any statement such as was read here?

A. I did not.

Q. Did you ever make such statement in substance, just tell the jury.

A. In substance to what, sir?

Q. These statements, the two paragraphs that were read here?

A. No, I did not.

Q. Were you ever handed a statement purported to have been made by you and asked to sign such a statement?

A. No, I was never handed a statement to sign.

Q. Were you ever asked to speak in front of a court reporter such as we have here in court for the purpose of speaking for the record?

A. No, sir.

Q. Now, this all involves a case which is being attempted to be proved here by the United States, is that right?

A. Yes, sir.

Q. One single instance, is that right?

A. That is right.

Q. Will you tell this jury what was the outcome of that case?

Mr. AULL. If the Court please, that has no bearing here in front of this jury.

The COURT. What case is that?

Mr. AULL. I don't know what he is talking about. The record speaks for itself, if you want to speak for it.

The COURT. Yes. There is nothing here about any
328 other case, Mr. Rope.

Mr. ROPE. I am referring to the case concerning which all this interrogation——

Mr. AULL (interrupting). I merely asked about statements, that is all I introduced that for.

Mr. ROPE. You asked him if the narcotics officers didn't go to his house, and if he didn't go to the Bureau with them and make certain statements. That certainly implies there was a case against this man. As I stated before it has been attempted to be proved by innuendo.

The COURT. If you want to go into it, then the Government can go fully into the question of what happened, the disposal of the case. Go ahead if you want to ask about it.

BLEED THROUGH— POOR COPY

Mr. ROPE. Is it the ruling of this Court that this defendant here may not be asked whether or not he has ever been convicted of any narcotic offense previously?

The COURT. Yes, you can ask him about that if you want to.

By Mr. ROPE:

Q. Have you ever previously been convicted at any time of any narcotic offense?

A. No, sir.

Mr. ROPE. All right, that is all.

(Witness excused.)

Mr. AULL. That is all we have.

Mr. ROPE. The defense rests.

Whereupon, the defendant rested his case.

329 PLAINTIFF'S REBUTTAL TESTIMONY

Whereupon, the plaintiff, to rebut the issues in its behalf offered testimony, oral and documentary, and made admissions as follows:

Mr. AULL. We would like to offer four witnesses. All of them will be short.

The COURT. All right.

GEORGE SHATTUCK recalled as a witness, having been previously duly sworn, testified further as follows:

Direct examination by Mr. AULL:

Q. Mr. Shattuck, you have been previously duly sworn?

A. Yes, sir.

Q. You are the George Shattuck who testified yesterday?

A. Yes, sir.

Q. You are a member of the Bureau of Narcotics of Kansas City?

A. Yes, sir.

Q. Mr. Shattuck, I will ask you whether or not on the evening of February 19, 1950, or early in the morning of February 20, 1950, you, in company with Agents Follmer and Witt and deputy sheriffs, and the defendant, Walden, went to his apartment at 2620 Prospect in Kansas City, Missouri?

A. Mr. Aull, I wasn't along on that occasion.

Q. You were not along on that occasion?

A. No, sir.

330 Q. I will ask you whether or not you were in the Bureau of Narcotics' offices on February 24, 1950?

A. Yes, sir.

Q. When Sam Walder came to the office?

A. Yes, sir.

BLURRED COPY

Q. Did he come there voluntarily or did you solicit him?

Mr. ROPE. If it please the Court, one objection to that question.

The COURT. Yes.

Mr. AULL. Very well.

The COURT. The objection is sustained, whether or not he was solicited or whether it was voluntary.

By Mr. AULL:

Q. Will you state to the Court and jury whether or not Sam Walder stated to you, Agent Witt and Agent Follmer at the Bureau of Narcotics office here in this building on February 24, 1950, that he had previously purchased heroin from several persons in Chicago, Illinois, in rather large amounts, explaining from one to two ounces at a time? That he further stated he was well acquainted with the big narcotic peddlers of Chicago, and that he was solid with these contacts and that if he were to assist the Government, any purchase of heroin by him would have to be in quantities of not less than one ounce as he was known as a wholesale dealer and it would not be logical for him to attempt to purchase in quantities of less than one ounce. Did Mr. Walder make that statement?

A. Yes, he did.

331 Mr. ROPE. We object to that that he has just read as being purely hearsay.

The COURT. The objection is overruled.

By Mr. AULL:

Q. Did this defendant make that statement in substance to you three officers?

A. Yes, he did.

Mr. AULL. That is all.

Cross-examination by Mr. ROPE:

Q. Your name, again, sir?

A. George Shattuck.

Q. You are Mr. Shattuck. I am trying to keep all of you straight. You don't know of your own knowledge whether he was summoned to come down to the Narcotics Bureau or whether he came voluntarily?

A. I know he was not summoned, he came voluntarily.

Q. Do you know——

Mr. AULL. Let him be allowed——

By Mr. ROPE:

Q. You know that you didn't summon him?

A. Yes, sir.

Q. You don't know of your own knowledge—you don't know of your own knowledge whether he was summoned by letter, phone

BLEED THROUGH— POOR COPY

call or any other method of summoning by someone else out of your hearing, do you?

A. I do not; no, sir.

Q. All right. Now, you say you were present when this alleged statement of this defendant was made?

A. Yes, sir.

Q. Was that statement—were you advised in advance he was going to make a statement to you?

A. No, sir.

332 Q. Who took down that statement?

A. It was not recorded in full.

Q. It was not recorded, is that correct?

A. I made notes relative to his statement.

Q. And so what has been made is from your memory?

A. It is from my notes.

Q. But your notes and what is written here is purely from your memory, is that right, from what you recall?

A. My notes are not from my memory.

Q. Did you write that down the way it was read to you?

A. Yes, sir.

Q. Was that made here in the Federal Building?

A. Yes, sir.

Q. You say it was made voluntarily?

A. Yes, sir.

Q. You have stenographers in your Bureau, don't you?

A. We have girls working in our office, yes.

Q. You have girls who are able to take down testimony, shorthand or stenotype?

A. At that time it wasn't testimony.

Q. Well, in other words, then you never in your Bureau take down a voluntary statement of a person you plan to use as a witness or file a charge against, except and until that becomes testimony, is that right?

A. I made notes. That was the record that I made.

Q. Do you or don't you?

A. I generally make notes.

333 Q. Well, do you ever when a witness comes in voluntarily, or a party that you propose to charge with something, comes in voluntarily to make a statement to you, do you want to tell this Court and this jury that it isn't customary for you to get a stenographer from one of the bureaus or departments or your own department and take down that man's statement verbatim so that he may sign it and you may forever have it as a record?

A. I don't know what your question is. I don't know——

Mr. Rope. Would you read the question back to him?

The Court. I don't either, it is so involved.

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Mr. ROPE. I will withdraw it.

The COURT. It is like the other witness said, you had better reduce it.

By Mr. ROPE:

Q. Do you want to tell this Court and jury that it is not your practice to take voluntary statements of parties whom you say are charged in a violation?

A. At that time?

Q. All you have to do is answer the question, that is all. Is it or is it not your custom?

A. I generally make notes relative to the conversation.

Q. Well, I still think we are getting around the substance of this and that is whether or not when a party comes in and offers to make what you say is a full and voluntary statement about his guilt, that you don't take down that statement by the use of a stenographer so that you may preserve it.

334 A. No, sir, when there is more than one agent present, an additional witness to those things, we have made it a policy not to make a written record.

Q. You have made that a policy?

A. I have, yes.

Q. You have or your department has?

A. I have.

Q. Is that the instruction of your superiors or is that your policy?

A. That is my policy.

Q. Who is the head of your department?

A. The immediate supervisor is Mr. Walker.

Q. But that is your own policy, to fail to take down what you say are voluntary statements of guilt?

A. I prepared notes. I did not fail to take down the statements.

Q. You made the notes you say this statement is composed of?

A. I made notes relative to what Walder said.

Q. And the other agent didn't make the notes then. You made the notes, is that right?

A. I made notes.

Q. Do you know whether the others did or not?

A. I am of the opinion that Agent Follmer did.

Q. Not your opinion, but do you know?

A. I have reason to know that he did.

Q. Well, did you see them make any notes?

A. I believe I did.

Q. Well, did or didn't you, not what you believe? If you remember, say so, and if you don't, say you don't.

BLEED THROUGH- POOR COPY

335 A. I saw Agent Follmer writing while he was sitting at his desk.

Q. You don't know whether he was making any notes of this case or not, do you?

A. I have reason to know that he made some notes.

Q. Do you or do you not?

The COURT. That is as far as we are going. He has answered about eight times already. If you have something else, go ahead and ask it.

Mr. ROPE. That is all.

Redirect examination by Mr. AULL:

Q. The notes were transcribed immediately after the conversation, is that correct?

Mr. ROPE. We object to that.

The COURT. What was it, please?

Mr. AULL. I asked whether the notes were reduced to a report a very short time after this conversation?

Mr. ROPE. That is leading.

The COURT. That isn't leading. The objection is overruled.

A. Yes, I reduced those notes.

The COURT. Is that all?

Mr. AULL. That is all.

(Witness excused.)

336 RALPH C. WITT, recalled as a witness, having been previously duly sworn, testified further as follows:

Direct examination by Mr. AULL:

Q. Mr. Witt, you are the same Ralph C. Witt who testified yesterday?

A. Yes, sir.

Q. You are an agent of the Bureau of Narcotics here in Kansas City?

A. That is correct, yes, sir.

Q. Mr. Witt, directing your attention to the date February 19, 1950, or early in the morning of February 20, 1950, I will ask you whether or not this defendant, Sam Walder, in company with you, Agent Follmer and two Deputy Sheriffs accompanied you to 2620 Prospect, Kansas City, Missouri, which he stated was his residence, and that before arriving at that location he told you that should you find any narcotic drugs, that they were his property and that his wife, Freda, was in no way responsible for any drugs which might be found?

A. He made that statement; yes, sir.

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Q. I will ask you further whether or not after arriving at that address, this defendant delivered to you one capsule of heroin containing 1.1 grains?

A. He turned the capsule over to Agent Follmer in my presence.

Q. What was done with the capsule?

337 A. It was delivered to the United States chemist for analysis.

Q. Mr. Dale?

A. Yes, sir.

Q. I will ask you whether or not February 24, 1950, here in this building in Kansas City, Missouri, this defendant appeared in your office and there with Agents Shattuck, Follmer, and yourself, he made the following statement, in substance: He stated that he had previously purchased heroin from several persons in Chicago in rather large amounts, explaining from one to two ounces at a time, and stated that he was well acquainted with the big narcotic peddlers of Chicago, and that he was solid with these contacts. Further, that if he were to assist the Government, any purchases of heroin by him would have to be in quantities of not less than one ounce for he was known as a wholesale dealer, and it would not be logical for him to attempt to purchase heroin in quantities less than one ounce?

A. That is correct.

Mr. AULL. You may inquire.

Cross-examination by Mr. ROPE:

Q. Mr. Witt, you don't know of your own personal knowledge whether this defendant came to the narcotics bureau in response from some one or not, do you?

A. No, sir.

Q. All you know is that you didn't call him?

A. I didn't call; no, sir.

Q. Who took this statement down?

338 A. Agent Follmer and Agent Shattuck made notes at the time.

Q. They both made notes at the time?

A. That is correct.

Q. Then did they compare their notes to compose the statement, is that what happened?

A. That is correct.

Q. Where was that comparing of notes done?

A. In Agent Follmer's office.

Q. At that time?

A. Following it.

Q. Is there anyone available around there to take down this defendant's statement as it is alleged he made verbatim?

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A. I don't recall at the time whether the stenographers were busy or not.

Q. You don't know whether they were busy or not?

A. No, sir. We were all in one room away from them.

Q. You couldn't possibly have interrupted them for the purpose of taking down the voluntary statement of what you want this jury to believe is a notorious narcotics dealer?

A. He volunteered his services to us. That is the reason we did not take a statement.

Q. Oh, he came in and volunteered his services to you?

A. Yes, sir.

Q. That wasn't in response to any request at all from you?

A. No, sir.

Mr. ROPE. All right, thank you.

(Witness excused.)

339 LLOYD E. DALE, recalled as a witness, having been previously duly sworn, testified further as follows:

Direct examination by Mr. AULL:

Q. Mr. Dale, you are the same Lloyd Dale who testified yesterday here?

A. Yes, sir.

Q. You are the United States chemist?

A. Yes, sir.

Q. You were sworn yesterday?

A. Yes.

Q. Mr. Dale, I will ask you whether or not on or about February 20th, one capsule containing a certain white substance was turned over to you by Agent Witt for analysis?

A. When?

Q. On February 20th or a few days thereafter.

A. Yes.

Q. Do you have your notes that you made there?

A. I have a signed copy of the report that I made.

Q. Did you analyze the substance that was turned over to you?

A. I did.

Q. What was it that the substance contained?

A. It was heroin, a derivative of opium.

Mr. AULL. You may inquire.

Cross-examination by Mr. ROPE:

Q. You don't know where the agents obtained it or what the source of it was, do you?

340 A. What is the question?

Q. You don't know where the agent obtained that or what the source of it was, do you?

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A. I don't know anything about it prior to the time that it was turned over to me.

Q. Let me ask you one further question here. What are some other common names for heroin?

A. The only common name, I believe, is heroin, although the narcotic addicts use other names.

Q. You don't know. I am referring to technical names, chemical names.

A. The chemical name for heroin is diastole morphine hydrofluoride.

Q. Morphine, is that correct?

A. Diastole morphine hydrofluoride.

Q. Is that ever shortened just to morphine?

A. Not if one is referring to heroin.

Q. What is morphine?

A. Morphine is a substance which is obtained from opium and has the formula $C_{17}H_{19}NO_3$.

Q. In other words, Mr. Dale, are morphine and heroin both refinements of opium?

A. Well, I wouldn't call them refinements. Morphine is a substance that is obtained from opium. It exists in the opium seed capsule and heroin is a substance that is produced synthetically from morphine by adding two acetal groups.

Q. Then it is produced from morphine?

A. It is made from morphine, yes.

341 Q. Does heroin have any medicinal value whatsoever?

A. It has been used medicinally.

Q. Is it on occasion used medicinally?

A. Very seldom, if ever, in this country.

Q. It is of the morphine group, is that right?

A. It is a derivative of morphine.

Q. How much heroin did you receive for analysis on this last occasion?

A. You mean on that day?

Q. On the occasion that you analyzed this amount of heroin?

A. At that time there was turned over to me one capsule containing one grain, and another exhibit of three capsules containing three and a half grains, and another exhibit containing 376 grains.

Q. I am referring to the one capsule referred to here.

A. That consisted of one grain.

Q. How does one grain of heroin compare to a similar amount of morphine?

A. Heroin is considered to be about four times as potent physiologically as morphine.

Q. It is considered a more potent drug?

BLEED THROUGH– POOR COPY

A. Yes.

Q. Do you know how much heroin an individual would be able to inject into his system in a day?

Mr. AULL. If the Court pleases, I——

The COURT. What is your purpose in this?

342 Mr. AULL. I don't know where we are going to end.

Mr. ROPE. All right, I will withdraw the question. That is all. I won't take up any more of Mr. Dale's time.

The COURT. May I make this inquiry solely for information, is heroin a narcotic?

The WITNESS. It is.

(Witness excused.)

The COURT. Very well.

Mr. AULL. That is all we have.

The COURT. Just a minute before you close. Come up here, gentlemen.

(Thereupon, discussion was had off the record, in the presence but out of the hearing of the jury.)

The COURT. Is that all?

Mr. AULL. That is all we have.

Whereupon, counsel for the plaintiff rested its case.

* * * * *

372 AFTERNOON SESSION, WEDNESDAY, JANUARY 30, 1952

Pursuant to adjournment as aforesaid, at 1:30 o'clock of Wednesday, January 30, 1952, came again the same parties, present and presiding as before, and the trial continued as follows:

Whereupon, at the conclusion of all the evidence, following the arguments of counsel, the Court charged the jury as follows:

CHARGE TO THE JURY

The COURT. Ladies and gentlemen of the jury, as I have repeated to you numerous times, you have heard the instructions of this Court on various occasions in connection with the trial of cases and know pretty much what it is to be.

The factual situation that we deal with here is to some extent a little different than those you have been dealing with. I must say to you, as I have said before, that the question of what

373 are the facts in the case is solely for you to determine, solely for your determination. What the law is, is for the Court to determine and to advise or charge you.

There is no use for the Court to go into detailed discussion of that relationship between the Court and the jury. Some of you, as I observed, have been on juries numerous times during the last few months.

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This case has extended over a considerable period of time, going into the last half of the second day.

The law is very simple. The facts, in my opinion, are not complicated.

As you know, under the Federal system as contrasted with our State system of trials, the judge in his charge to the jury may comment upon the evidence, even express an opinion about it without committing any error. However, if the Court does that—and the Court may—I want to charge you that you are not bound by the Court's statements as to the facts. The facts are for you to determine, and for you only. If you make a mistake, there is no one to correct your error. If I make a mistake, there is another court to correct my mistake. Your responsibility is, therefore, the more important.

You are the sole judges of the credibility of the witnesses and of the weight and the value you will give to a witness' testimony, and in considering the weight you will give to any witness'
374 testimony, you may take into consideration the demeanor of the witness on the witness stand; the interest of the witness in the outcome of the case; the willingness of the witness to speak truthfully with respect to matters within the knowledge of such witness; the opportunity the witness had to know and to be informed with respect to such matters as the witness gives testimony about; the reasonableness or unreasonableness in your opinion of the witness' testimony; the feeling on the part of the witness, if any, as shown by the evidence for or against any party in the case. And if you conclude that any witness has wilfully sworn falsely to any material fact in issue, you are at liberty to disregard the whole or any part of such witness' testimony.

I think one of the strongest things in our judicial system in this country is the fact that we draw from the body of the people juries composed of men and women who come into a court of justice in which they may use their experience in the affairs of life in determining what the facts are. They come into this court free of prejudices, free of sympathies, to take the facts as they find them. They may take into consideration in weighing the evidence the people who are before them, what the facts are, and to arrive at their conclusion fearlessly and without regard to fear or favor of any kind or character, from any source.

375 As I said, the law in the case is simple and the facts are not complicated.

It is charged in four indictments which are in exactly the same language that, with the exception of the dates and the amounts, the first is that on the 10th day of January 1951, at Kansas City, in the Western District of Missouri, Sam Walder did sell and transfer five grains of heroin, a derivative of opium, not in pursuance of

BLEED THROUGH– POOR COPY

a written order to the person to who it was sold on a form issued in blank by the Collector of Internal Revenue.

Now, let's eliminate first, I think we can do that, that if there was a sale of heroin in this case, that it was not done in pursuance of a form that was issued by the Collector of Internal Revenue, so that is not in the case.

If there was a sale, if was unlawful, so we can eliminate that from any consideration of the case.

Each of the four counts is identically the same language, as I say, except as to the dates, one on January 10th, one on the 11th of April, one on the 12th of April, and one on the 8th of May, 1951. Different amounts of heroin are described in each of the counts and it is alleged that those amounts were sold. Of course, that indictment that has been returned against the defendant is no evidence of his guilt and should not be considered by you as
376 any evidence of the guilt of the defendant. It is the manner in which the case is brought to this court for your consideration. It is a mere formal charge, and as I say, carries with it no implications of guilt.

It is the duty of the Government to prove to your satisfaction, beyond a reasonable doubt, the guilt of the defendant. And that duty, legal duty, remains with the Government throughout the case. That is, it is the duty of the Government to prove to your satisfaction, beyond a reasonable doubt, that the defendant committed the crime or crimes as charged in the indictment and explained in these instructions, and if upon a view of the whole case you have a reasonable doubt as to the defendant's guilt, you will give him the benefit of that doubt and acquit him.

But a reasonable doubt to authorize an acquittal on that ground must be a substantial doubt of the defendant's guilt, formed on a careful consideration of all of the facts and circumstances proven in the case, and not a mere possibility of the defendant's innocence.

You have in this case two types of evidence. There isn't any reason for the Court to repeat and go over all of the facts and review all of the evidence. It is before you. You remember the testimony of the Government agents and of the informers, the means that were provided and the time of the alleged purchases.

377 Now then, there are two types of evidence. We have them both in this case. We have "positive" evidence and we have "circumstantial" evidence, and either one is sufficient to convict if you believe it. "Direct" evidence is evidence of eye witnesses or evidence of persons who saw or heard the things about which they testify upon the trial. Of course, impressions may be derived from what we ordinarily call eye witnesses through their

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use of the five senses, and they may testify as to those impressions, from the stand. That is "direct" evidence.

Now, we have the direct evidence in this case from the two informers—I have forgotten their names—Taylor and Jenkins. That is "direct" testimony. They testify that they made purchases from this defendant and paid the money for them. They made purchases of heroin. That is "direct" evidence.

"Circumstantial" evidence is the proof of certain facts and circumstances from which certain inferences inevitably arise, according to the common experience of mankind. These inferences, of course, need not inevitably follow, but they ought to reasonably follow the circumstances detailed in evidence. These circumstances ought to be consistent with each other and consistent with the guilt of the defendant, and at the same time inconsistent with any reasonable hypothesis of the defendant's
378 innocence.

Now, we have the direct evidence, as I stated, of the two informers who testified here that they made the purchases on four different occasions, the locations of which are in evidence before you. That is direct evidence. If you believe the direct evidence alone, then we are not concerned with the circumstantial phases of the situation, but you are entitled to take the two together.

The other evidence is that the narcotic agents—and may I pause here to say, and this is an expression of an opinion, that there is no attack in this case upon the credibility of the Government's witnesses, of the narcotic agents. It seems to me that it is reasonable to presume that the agents believe, that the agents did and had in mind the idea of bringing about a purchase of narcotics from this defendant if it could be done, and for that purpose they employed and had the services, the benefit of the services of the informers—now, the circumstances come in in this. It is testified to by the agents that, one of them particularly, that he went to the telephone and rang the number or caused the number of this defendant to be rung. Of course, he couldn't say who he talked to, but following that certain things transpired. It is natural to presume that one thing may follow another if they are so related. They testify that pursuant to one of those calls certain things were done, they saw this defendant go into
379 the place or into the tavern where one of these informers was.

Now, there is some suggestion here that the agents may have been mistaken about this defendant. That is a matter for you to determine, taking into consideration again your experiences. These agents testify that they have known this defendant since 1949. There is other evidence in the case that you may take into

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consideration in determining whether or not they were mistaken about their knowledge of this defendant, whether or not they identified him.

Now, it isn't in evidence that they saw actual transactions. The circumstances simply are that through certain methods apparently contact was made and that thereafter certain things happened. Now, you may tie those things in as circumstances in connection with the direct testimony in this case in arriving at your verdict.

The Court admitted some testimony in this case concerning certain alleged admissions and certain other evidence with respect to the former possession of narcotics. The Court made the statement to you at the time this evidence was admitted that it was not done for the purpose—it was not proof of the guilt of the defendant in this particular case, but that it was admitted simply by way of impeachment if it was, if you believe it. In other
380 words, the defendant testified from the witness stand that he had never been connected with narcotics, except as provided for by a physician. The evidence of the agent is—the defendant denies it, but the evidence of these two agents is that they took from him on a certain occasion, in his house, or he gave to them on a certain occasion in his house a capsule of heroin, and there is no evidence that it was there for medicinal purposes or had been supplied under the authority of a physician. So the Court simply admits that testimony for whatever it is worth in determining the weight of this evidence.

There is also in evidence the fact that two of these witnesses have been convicted. Evidence has been introduced in this case showing a prior conviction of two of the parties, one of the witnesses, and the defendant. You are not to understand that in the admission of this testimony the Court is saying to you that because of a prior conviction the witness cannot be relied upon to tell the truth in the case, but you may consider such evidence of a prior conviction only as it affects his credibility as a witness in this case or as the defendant.

You have before you—it is not for me to say, but you have before you the witness Jenkins, I believe his name is. He is now in the Missouri State Penitentiary. You may take into consid-
381 eration your common experiences in determining whether or not there is any compulsion upon him to testify in view of the fact that he is in the penitentiary. He was here and testified. You heard his testimony. You heard the testimony of the other witnesses that he had been used in a number of cases in connection with narcotics.

As has been stated in the case on both sides, we are not dealing—I shall not use their language—we are not dealing with Sunday School classes when we are dealing with this type of matter, and

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the sole and only question in this case is whether or not this defendant sold the narcotics.

So if you find and believe beyond a reasonable doubt that on the 10th day of January 1951, the defendant, Sam Walder, did sell five grains of heroin, a derivative of opium, and that it was not in pursuance of a written order, then it will be your duty to find him guilty under that count.

If you find that on the 11th day of April 1951, he sold twelve grains of heroin under the same conditions, it would be your duty to find him guilty. The same on the 12th of April, the third count and the fourth count.

You, of course, may find the defendant guilty on all of the counts or you may find him not guilty on all of the counts.

382 You may find him guilty on one count and not guilty on another count as you determine the evidence to be.

If you find and believe from the evidence that the defendant did not sell the narcotics as alleged in this information or in any of the counts of this indictment, rather, then it would be your duty to find the defendant not guilty.

It requires 12 of your number agreeing to return a verdict. A form has been provided for you. If you find the defendant guilty, it will be necessary for the foreman only to sign it. If you find him not guilty on all counts, it will be necessary to write the word "not" in the blank spaces provided therefor.

If you find him not guilty on one count and guilty on another, you will write into the blank spaces the word "not" in the count on which you find him not guilty.

The jury will retire for just a moment until the Court has made the record.

(Whereupon, the jury retired from the courtroom and the following proceedings were had:)

The COURT. All right, Mr. Aull, what exceptions do you have?

Mr. AULL. No exceptions, Your Honor.

The COURT. Mr. Rope, what are you exceptions to the charge of the Court?

383 Mr. ROPE. If it please the Court, the defendant desires to object to that portion of the charge concerning circumstantial evidence on the ground that the charge of the Court embodies mixed matters of law and fact, and that it is not a correct statement of the law of this case.

The defendant further desires to object to that portion of the charge of the Court concerning circumstantial evidence on the ground that the charge contains statements of fact which invade the province of the jury.

That is the only objection of the defendant.

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The COURT. Does counsel recall that counsel requested the Court to give the instruction on circumstantial evidence?

Mr. ROPE. I do, Your Honor.

The COURT. I gave it. I gave it at your request.

Mr. ROPE. Thank you.

The COURT. All right. If you want to except to it after you have requested it and I have given it, I am afraid it won't avail you very much. I wouldn't have given it had you not requested it.

Mr. ROPE. I understand that, Your Honor.

The COURT. All right, bring the jury in.

(Whereupon, the jury returned to the courtroom and the following proceedings were had:)

384 The COURT. The jury will retire to consider of their verdict.

(Whereupon, the jury retired to the jury room to consider of its verdict, and thereafter returned to the courtroom and the following further proceedings were had:)

The COURT. Have you agreed upon a verdict, ladies and gentlemen of the jury?

The FOREMAN. We have, Your Honor.

VERDICT OF THE JURY

The COURT. "United States of America versus Sam Walder. We, the jury in the above entitled cause find the defendant guilty as charged in Count I of the indictment.

"We, the jury in the above entitled cause, find the defendant, Sam Walder, guilty as charged in Count II of the indictment.

"We, the jury in the above entitled cause, find the defendant, Sam Walder, guilty as charged in Count III," and the same in Count IV.

Is that your verdict, ladies and gentlemen of the jury?

The FOREMAN. Yes.

The COURT. Gentlemen, do you desire to have the jury polled?

Mr. ROPE. We do not.

The COURT. Very well.

All right, the defendant will come forward.

385 Do you have any statement, Mr. District Attorney, about the matter?

Mr. AULL. No, sir, other than the previous record of this man.

The COURT. What do you have to say, Mr. Walder?

The DEFENDANT. I have no statement, sir.

The COURT. Do you have any, Mr. Rope?

Mr. ROPE. Well, Your Honor, I beg the pardon of the Court; I am not entirely familiar with the procedure at this time.

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I would like leave of the Court to file a motion for new trial.

The COURT. You can file a motion for new trial. That hasn't anything to do with the sentence of the Court.

Mr. ROPE. I didn't know, Your Honor.

The COURT. You may file your motion but the sentence of the Court will be imposed.

In this case, gentlemen, it is not entirely new to the Court; I want to congratulate the jury on the verdict they have returned. This case has been before the Court before, in 1950, as I recall. Is that the date?

Mr. AULL. February; yes, sir.

The COURT. When this defendant and his wife were arrested at the Union Depot—these are not matters of evidence, they
386 are matters that came to the Court in connection with a pre-sentence investigation of this matter and other matters. They were arrested. A search was made but nothing was found. They were taken to the police station. Later an ounce of heroin was found in the car in which they had been riding. About midnight the narcotic officers and the deputy sheriffs took this defendant in handcuffs to his residence for the purpose of searching it.

I am going by the record and what was filed before the Court. It was a matter of court record.

They went in for the purpose of searching. The defendant finally stated rather than have them tear up the house or something, as the evidence was conveyed to the Court, the information by the attorney, that he would turn it over to them. So the heroin was turned over to the officers.

Thereafter, a motion was filed in this court, a case was filed against him. I think the jury ought to know this. This doesn't make any difference. It is simply an explanation of what happened. A case was filed against him. A motion was filed to suppress the evidence and the Court was compelled to suppress the evidence because it was a violation of the defendant's constitutional rights to go into the apartment while he was under arrest and in custody and make a search without a search warrant.

The Court therefore suppressed the evidence and the
387 case necessarily had to be dismissed. I don't think there is any question under the evidence in this case about the defendant's guilt, but what he was one of the so-called leaders of the narcotic ring in Kansas City, which is rather limited, limited both in area and among people, fortunately. But that doesn't prevent the Court from administering the law with all of its penalties when we find that they are violated.

The defendant has nothing to say in the matter.

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In the first count the defendant will be committed to the custody of the Attorney General of the United States for a period of five years; committed to the custody of the Attorney General on the second count for a period of five years, to run consecutively to and to begin at the expiration of the first sentence; to be committed to the custody of the Attorney General of the United States for a period of five years on the third count, to run consecutive to and to begin at the expiration of the first and second counts, making a total of 15 years; to be committed to the custody of the Attorney General on the fourth count in the sum of five years to run concurrently with the other three sentences, so that there will be a total sentence of 15 years imposed upon the defendant.

And, the foregoing were all of the proceedings had at said time and place.

* * * * *

390 In United States Court of Appeals for the Eighth Circuit

No. 14654

Appeal from the United States District Court for the Western District of Missouri

SAM WALDER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

OPINION—FEBRUARY 19, 1953

Sam Walder, Appellant, submitted brief pro se.

Sam Wear, United States Attorney, and William Aull III, Assistant United States Attorney, submitted brief on behalf of Appellee.

Before SANBORN, WOODROUGH and THOMAS, *Circuit Judges.*

391 THOMAS, *Circuit Judge.*

The appellant was indicted, tried, convicted and sentenced to a term of years in prison, and he appeals. At the close of the evidence he moved for a judgment of acquittal and after judgment was rendered he moved for a new trial. Both motions were overruled. In his brief he asks that the judgment be reversed and that he "be granted such other and further relief as may seem proper."

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The indictment is in four counts. Each count charges a violation of the Anti-Narcotic Act, 26 U. S. C. § 2554 (a). The statute reads:

"It shall be unlawful for any person to sell, barter, exchange, or give away any of the drugs mentioned in section 2550 (a) except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged or given, on a form to be issued in blank for that purpose by the Secretary."

Section 2550 (a) mentions opium and any compound, salt, derivative or preparation thereof.

Count I of the indictment charged a sale and transfer of 5 grains of heroin, a derivative of opium, on January 10, 1951; count II charged a sale of 10 capsules containing 12 grains of heroin on April 11, 1951; count III charged a sale of 10 capsules containing 11½ grains of heroin on April 12, 1951; and count IV charged the sale of 8 capsules containing 10 grains of heroin on May 8, 1951, all within the jurisdiction of the court, and all in violation of the Act.

Appellant pleaded not guilty and was tried to a jury. He was represented at the trial by able counsel, but he appears in this court *pro se*. He seeks reversal upon two grounds:

1. That the court erred in admitting certain evidence, and
2. That the United States Attorney's argument to the jury was improper and was calculated to mislead the jury.

392 The contentions of the appellant do not challenge the sufficiency of the evidence to support the verdict of the jury. The government introduced evidence, not criticised on this appeal, which abundantly supports the verdict of conviction on each of the four counts of the indictment. The first contention on this appeal relates to evidence introduced by the government in rebuttal for the purpose of impeaching the credibility of the appellant. When the government rested the appellant testified in his own behalf. In answer to questions propounded to him by his attorney, he testified that he had "never sold any narcotics to anyone in my life"; that he had never had any narcotics in his possession, other than what had been given to him by a physician for an ailment; that he had never handled or given any narcotics to anyone as a gift or in any other manner; and that he had never acted as a conduit for the purpose of handling what he knew to be a narcotic from one person to another.

On cross-examination in answer to questions by the district attorney the appellant repeated these denials. He then testified that in the month of February, 1950, he was living in Apartment 3 in an apartment house in Kansas City, and that he had seen Mr. Witt and Mr. Follmer, agents of the Bureau of Narcotics of

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Kansas City. He was then asked and over the objection of his counsel answered the following questions:

"Q. Do you recall going to your apartment with them on the evening of February 19th or early in the morning of February 20, 1950?—A. Yes. Q. Now, when you arrived at that apartment * * *, I will ask you, Mr. Walder, whether or not you turned over to them 1 grain of heroin?—A. I did not. Q. Now I will ask you if on that occasion prior to arriving you stated to these officers that should they find any narcotic drugs in this apartment, that they were your property and your wife, Freda, was in
393 no way responsible for any drugs which might be found?—A. I don't recall any such conversation. Q. Do you deny that?—A. I deny."

These questions were objected to by counsel for the appellant; and in a discussion of the question thus raised, not in the presence of the jury, it developed that on the occasion referred to in February 1950, the appellant was arrested by the two officers who accompanied him to his apartment for the purpose of searching his premises for narcotics and that after their arrival at the apartment the appellant "to avoid tearing things up" voluntarily delivered to the officers one capsule containing 1.1 grains of heroin.

Subject to the same objection and to the same ruling, the appellant then denied that on that same evening he told the officers on the way to his apartment "that should they find any narcotic drugs there that the same were his property and that his wife was in no way responsible for any drugs which might be found there."

The court then said to counsel for the appellant: "If you hadn't * * * asked him whether or not he had ever had anything to do with narcotics or any connection with them, then the court would have been compelled under the law to sustain the objection. * * * But you opened it up by asking whether or not he had ever had anything to do with narcotics and as a result of that answer 'No,' then * * * it becomes competent to show that he did have something to do, that he did possess narcotics. I think you could show a prior sale of narcotics in order to impeach him as to that particular statement. It goes to his credibility. * * * The court will say to the jury that this testimony is not admitted for the purpose of showing the guilt of the defendant with respect to these particular sales * * * it is simply by way of impeachment as to the credibilit of the witness." The court so
394 instructed the jury at the time the evidence was admitted and again in his final instructions.

The court explained, not in the presence of the jury, that the appellant was indicted for the offense which he committed in 1950,

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and that when that case came on for trial the evidence discovered by the narcotic agents by their going to appellant's apartment to make a search for narcotics without a search warrant was rejected by the court on the ground that it was obtained by an illegal search, and the indictment was dismissed and the appellant was discharged.

Counsel for the appellant then explained his position in the present case as follows: " * * * if that evidence was incompetent and inadmissible at that time to prove this man's guilt * * *, then that evidence is now at this time totally incompetent * * *, and it is again in violation of this man's constitutional rights to attempt to use evidence of that transaction for the purpose of impeachment in this case * * *."

In rebuttal officer Witt testified without further objection that on February 19th or the early morning of February 20, 1950, the appellant accompanied him and officer Follmer and two deputy sheriffs to appellant's residence and that on the way appellant told them that should they find any narcotic drugs they were his property and not his wife's, and that after they arrived at the residence appellant delivered to him one capsule of heroin containing 1.1 grains.

The appellant relies upon cases arising under the Fourth Amendment to the Constitution holding that evidence obtained during an illegal search is not admissible to prove the guilt of one charged with an offense under a law of the United States, citing *Weeks* v. *United States*, 232 U. S. 383; *Silverthorne*
395 *Lumber Co.* v. *United States*, 251 U. S. 385; *Weiss* v. *United States*, 308 U. S. 321; *Nardone* v. *United States*, 308 U. S. 338; and *Goldstein* v. *United States*, 316 U. S. 114. The application of the Fourth Amendment is more recently illustrated in *Johnson* v. *United States*, 333 U. S. 10; *Lustig* v. *United States*, 338 U. S. 74; and *United States* v. *Jeffers*, 342 U. S. 48. The appellant relies also on cases supporting the rule that evidence of the commission by a defendant of an offense similar to that for the alleged commission of which he is on trial is not admissible to prove his commission of the latter offense, such as *Boyd* v. *United States*, 142 U. S. 450; and *Gart* v. *United States*, 8 Cir., 294 Fed. 66.

The cases cited and relied upon by the appellant are not in point here. In all of them the evidence in question was introduced for the purpose of supporting the government's charge in the indictment. That is not the case here. In the present case the evidence was introduced for the sole purpose of impeaching the credibility of the appellant, and the court was meticulous in protecting his rights by instructions limiting the consideration of the evidence to the one point for which it was admitted. In such a case the evidence is admissible. The ruling of the court

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under these circumstances is supported by numerous controlling authorities. See *Michelson* v. *United States*, 335 U. S. 469; *United States* v. *Corrigan*, 2 Cir., 168 F. 2d 641; *Dowling Bros. Distilling Co.* v. *United States*, 6 Cir., 153 F. 2d 353, cer. den., 328 U. S. 848, rehearing den., 329 U. S. 820; *Ellis* v. *United States*, 8 Cir., 138 F. 2d 612. And see 23 C. J. S. Criminal Law, §1032; also *Gibson* v. *United States*, App. D. C., 149 F. 2d 381.

In appellant's Supplemental Brief he complains that " * * * the United States Attorney in his closing argument to the
396 Jury deliberately led the jury to believe that the defendant had served time in the penitentiary and erroneously made reference to a penitentiary record of defendant's which does not exist, and continuously referred to the defendant by the name of 'Mr. Big.' "

This criticism of the argument to the jury is without merit. On cross-examination appellant was asked: "Q. Will you state to this court and jury, Mr. Walder, whether or not you were sentenced to a term of 1 to 5 years for grand larceny in the State of Kansas?"

After higgling and evading through four pages of the record and volunteering that he had served a term in the reformatory when he was a "kid," he was asked again: "Q. Were you convicted of grand larceny?—A. I imagine I am convicted. I am not familiar with the laws. Q. After the trial you served time, is that correct?—A. Yes, sir. Q. From one to five years?—A. Yes, sir."

The United States Attorney did nothing improper in referring to this record.

Appellant suggests further that the United States Attorney improperly referred to him as "Mr. Big" in argument to the jury. This occurred when the United States Attorney was commenting upon the evidence relating to the illicit handling of narcotics in Kansas City. The evidence was to the effect that there were two classes of dealers in the unlawful sale and distribution of narcotics at the time of appellant's operations in the Kansas City territory. They were wholesalers and retailers. They were referred to among themselves as big dealers and pushers. Wholesalers or big dealers sold heroin to the pushers for $2 a capsule and they in turn sold to the addicts for $3 per capsule. Appellant was a wholesaler or big dealer. He sold to the "pushers," but after the first sale to a particular "pusher" he required the pusher to buy in
397 quantities of not less than $50 worth at a time. It was in commenting on appellant's position in this matter that he was referred to as "Mr. Big," meaning a big dealer and not a pusher. No objection was made to the argument at the trial by appellant or by his able counsel, and we do not think it is a ground for reversal.

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An examination of the whole record is convincing that the appellant had a fair trial and that the court carefully protected his rights throughout the proceedings.

Affirmed.

WOODROUGH, *Circuit Judge*, dissenting.

I am unable to concur because I think the fruits of the illegal search of the appellant's home were erroneously received in evidence against him.

398 In the United States Court of Appeals for the Eighth Circuit

No. 14654

SEPTEMBER TERM, 1952

SAM WALDER, APPELLANT

v.

UNITED STATES OF AMERICA

Appeal from the United States District Court for the Western District of Missouri

JUDGMENT—FEBRUARY 19, 1953

This cause came on to be heard on the record from the United States District Court for the Western District of Missouri, and on the briefs filed by the respective parties.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment and sentence of the said District Court in this cause be, and the same is hereby, affirmed.

And it is further ordered by this Court that the defendant in the District Court, Sam Walder, do surrender himself to the custody of the United States Marshal for the Western District of Missouri, if not now in custody, in execution of the judgment and sentence imposed upon him, within thirty days from and after the date of the filing of the mandate of this Court in the said District Court.

FEBRUARY 19, 1953.

* * * * *

401 [Clerk's certificate to foregoing transcript omitted in printing.]

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402 SUPREME COURT OF THE UNITED STATES

NO. ——

OCTOBER TERM, 1952

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—FILED MARCH 14, 1953

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 20, 1953, provided the time for obtaining an extension has not already expired.

Tom C. Clark,
TOM C. CLARK,
Associate Justice of the Supreme Court of the United States.

Dated this 16th day of March, 1953.

405 [File endorsement omitted.]

406 SUPREME COURT OF THE UNITED STATES

No. 480

MISC. ——, OCTOBER TERM, 1952

[Title omitted.]

On petition for writ of certiorari to the United States Court of Appeals for the Eighth Circuit

ORDER GRANTING CERTIORARI—JUNE 15, 1953

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket and placed on the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

407 [Stipulation as to printing of record omitted in printing.]

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FILED
NOV 10 1953
HAROLD B. WILLEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 121

SAM WALDER,

Petitioner,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR PETITIONER

PAUL A. PORTER,
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Note, Admissibility in State Courts of Evidence Obtained by Unreasonable Searches and Seizures, 35 Minn. L. Rev. 457 (1951) 10

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Wingren, The Law of Searches and Seizures, 18 Rocky Mtn. L. Rev. 345 (1946) .....
Advisory Committee, Federal Rules of Criminal Procedure, Preliminary Draft (1943) .....
Advisory Committee, Federal Rules of Criminal Procedure, Second Preliminary Draft (1944) .
Advisory Committee, Federal Rules of Criminal Procedure, Final Report (June 1944) .....

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 121

SAM WALDER,

Petitioner,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR PETITIONER

Opinions Below

The opinion of the Court of Appeals is reported at 201 F. 2d 715 (R. 185).[1]

Jurisdiction

The judgment of the Court of Appeals was entered on February 19, 1953 (R. 190). Petitioner's *in forma pauperis* petition for certiorari was filed on April 20, 1953, to which date the time for filing had been extended on March 16, 1953 (R. 191). This Court granted certiorari on June 15, 1953, 345 U. S. 992. Jurisdiction is invoked under 28 U. S. C. § 1254(1).

[1] "R." references may be found in the printed stipulated Record.

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Questions Presented

In a previous prosecution of the petitioner, evidence that he possessed narcotics was held to have been obtained by illegal search and seizure, and suppressed, and the indictment was thereafter dismissed. In this second proceeding, involving a later and different narcotics offense, the evidence was admitted on rebuttal to disprove petitioner's testimony that he had not been guilty of the first offense.

The principal question presented is whether evidence obtained by unlawful search which is inadmisssible to prove the case in chief may nevertheless be admitted to impeach the defendant if he takes the stand.

A second question, which the Court will not reach unless the first is resolved against petitioner, may be stated as follows: Whether defendant's actual guilt under a former indictment which was dismissed may be proved by extrinsic evidence introduced to impeach him in a prosecution for a subsequent offense.

Constitutional Amendments and Rule Involved

Fourth Amendment:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, . . ."

Sixth Amendment:

"In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; . . ."

Rule 41(e), Federal Rules of Criminal Procedure:

"(e) *Motion for Return of Property and to Suppress Evidence.* A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was

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illegally seized without warrant, . . . The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial."

Statement of the Case

In 1950, before the prosecution in the case at bar, federal narcotics agents arrested the petitioner, Walder, his wife and a third person in Kansas City on information they were in possession of illegal narcotics. The agents searched them but found nothing. The prisoners were nonetheless booked, jailed and Walder's keys taken from him. After several hours, the agents placed Walder in a car, drove to his apartment and began to search it. They found a one-ounce capsule of heroin. The officers admitted that they had no knowledge prior to the search that there were any narcotics concealed in the defendant's home (A. 23-27).[2]

On the basis of this search petitioner was indicted for illegal sale and illegal possession (A. 25). He moved to suppress the evidence under Rule 41(e), F. R. Crim. P. His motion, following Form 16, Appendix, F. R. Crim. P., prayed that the property "be returned to him and that it be suppressed as evidence against him in *any* criminal proceeding." (A. 22). (Emphasis added.) The matter came on for hearing before Judge Duncan. Petitioner alleged, and the court found, that the agents had failed to secure a search warrant (A. 24, 26). The evidence was not seized during an arrest, and the search was not justified by certain knowledge that a crime was being committed. A federal commissioner could easily have been

[2]Appendix A to this Brief, to which the "A." references in this section refer, contains the docket entries and copies of documents relevant to these 1950 proceedings. Original certified copies have been lodged with the Clerk's Office. The material was before the District Court during these proceedings (R. 164).

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reached during the long detention if there had been grounds justifying a warrant. The search under all the authorities in the field was "unreasonable." The Court therefore granted the motion (A. 27), and shortly thereafter the Government voluntarily dismissed the 1950 indictment (A. 27).

One year later, in 1951, petitioner was indicted in the case at bar on four counts (R. 5) charging him with four separate sales of heroin in violation of the Internal Revenue Code, 26 U. S. C. § 2554(a), 53 Stat. 272 (R. 6-7). He entered a plea of Not Guilty. In its case in chief the prosecution introduced federal agents who testified that they had secured the services of two dope addicts and had observed them telephoning defendant to arrange sales of heroin, had given them money to purchase the drugs, and had searched them just prior to each of the alleged purchases made by them (*e.g.*, R. 117-137). The two addicts corroborated the working arrangements with the Government and testified directly as to the four purchases charged in the indictment (R. 87-117). The testimony thus followed the customary pattern in such cases.

The sole witness for the defense was the defendant himself. He denied ever having sold or given anyone narcotics (R. 137-138). He gave as a reason for the testimony against him that each of the two dope addicts had cause to dislike him. Jenkins was indebted to him (R. 144-147). Taylor had come to his apartment one evening to demand a loan; defendant refused and Taylor threatened to "get even" (R. 151-154). Aside from these incidents, petitioner denied any dealings with either one (R. 149, 154).

On cross-examination, the prosecuting attorney asked petitioner if he had ever "had anything to do with narcotics," which he denied (R. 161). He was then asked "whether or not the evening of February 19th or early in the morning of February 20th [1950], in the company of agents Follmer and Witt of the Narcotics Bureau here in Kansas City, Mis-

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souri, you went to your apartment at 2620 Prospect here in Kansas City, Missouri?" He answered "Yes." (R. 162).

> "Q. [By Mr. Aull] Now, when you arrived at that apartment, I will ask you, Mr. Walder, whether or not you turned over to them 1 grain of heroin?
> "A. I did not." (R. 163).

Petitioner's counsel objected and the Court heard argument at the bench. The prosecuting attorney stated he "intend[ed] to prove that there was on that occasion found one grain of heroin in his apartment" (R. 164). The Court allowed the questioning (R. 165), and plaintiff stood by his denial (R. 166). Then, on rebuttal, the prosecution introduced affirmative testimony as to this 1950 discovery of narcotics in petitioner's apartment. This evidence is the heart of the case (R. 174):

> "Q. [By the prosecuting attorney] I will ask you [narcotics agent Witt] further whether or not after arriving at that address, this defendant delivered to you one capsule of heroin containing 1.1 grains?
> "A. He turned the capsule over to Agent Follmer in my presence.
> "Q. What was done with the capsule?
> "A. It was delivered to the United States chemist for analysis."

Holdings Below

District Judge Duncan admitted the questions concerning this illegal search in the trial as to the 1951 sales. He held that "further testimony concerning it" (R. 166) had now become competent because of the fact that petitioner had "opened . . . up" the matter of prior possession and that the prosecution was entitled to submit countervailing evidence, even if the product of an illegal search, for "impeachment of his statements" (R. 164). The court charged the jury that the evidence would "be admitted solely by way

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of impeachment of the witness' statement that he had never had anything to do or any connection with narcotics" (R. 186), and in his later instructions stated: "So the Court simply admits that testimony for whatever it is worth in determining the weight of this evidence" (R. 181).

The Court of Appeals for the Eighth Circuit affirmed the ruling by a two-to-one vote, but the opinion fails to set out the reasoning on which the result was based (R. 185). It held simply that the testimony had been adduced for the "sole purpose of impeaching the credibility of the appellant." "In such a case the evidence is admissible" (R. 188). It cited no direct authority for this proposition.

Argument

1. *It was error under the Weeks rule to admit evidence of the illegal seizure.*

This case raises no issues of fact. That the search and seizure in 1950 was forbidden by the Fourth Amendment is an adjudication which cannot be collaterally attacked in this case.

"It has long been settled that evidence obtained in violation of the prohibition of the Fourth Amendment cannot be used in a prosecution against the victim of the unlawful search and seizure if he makes timely objection . . . And we have further held that the policy underlying the amendment cannot be circumvented by the indirect use against the victim of the evidence so obtained." *Goldstien* v. *United States*, 316 U.S. 114, 120 (1942).[3]

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[3] Most of the thirty-five cases that have reiterated the rule in this Court since *Weeks* v. *United States*, 232 U.S. 383 (1914), are set out and analyzed by Mr. Justice Frankfurter in an Appendix to his dissent in *Harris* v. *United States*, 331 U.S. 145 (1947) beginning at 175. We have brought the list up-to-date in our Appendix B (A. 28).

Needless to say, the rule has been extensively applied in the lower courts. Shepard's citations to *Weeks* v. *United States*, *supra*, for instance, cover sixteen full columns.

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The Government attacks neither the factual determination nor the rule. But it attempts, in its argument here, to create a special exception, which it induced the Eighth Circuit to adopt—that evidence of an illegal search, clearly inadmissible to prove the offense itself, may be admitted on rebuttal to impeach the credibility of a criminal defendant who takes the stand and affirmatively protests his innocence.

That this is not the law is conclusively shown by *Agnello* v. *United States*, 269 U.S. 20 (1925), which the Circuit Court ignored. Agnello and others were indicted for a conspiracy and an illegal sale of narcotics. The federal agents had arrested the gang just after the exchange took place. On trial, they stated they had watched Agnello bring the container of narcotics to the place of sale. Agnello, in defense, said he had had no idea what was in the can, and, on cross, denied ever possessing narcotics. The prosecution produced a second can of opium. Agnello claimed he had never seen it before. Then, on rebuttal, the prosecution adduced the agents' testimony that this second can had been seized in Agnello's own bedroom on the same day the sale was made.

This Court unanimously held that seizure illegal. As to the testimony describing it, it said (Id. at 25):

> "[T]he contention that the evidence of the search and seizure was admissible in rebuttal is without merit."

We rest on the proposition that the result in *Agnello* compels a like result here.

The Government admits the two cases are similar "at first blush." But it argues that the *Agnello* decision can be distinguished on the ground the opinion "implicity recognized that, had Agnello on direct examination given testimony which could have been construed as opening the door to examination concerning the suppressed narcotics, the cross-examination and the admission of that evidence might have been justified." (Br. in Opp. 9).

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The record shows that no such distinction can be made. Walder "opened the door" no wider than did Agnello. The Record of that trial indicates Agnello just as flatly denied on his direct examination that he had ever handled narcotics:

> "Q. Have you ever spoken to [Centorino, another defendant] at any time in your life about cocaine? About selling cocaine?
>
> "A. No, sir.
>
> "Q. Did you ever have any conversation with Alba about selling cocaine?
>
> "A. No, sir." (Record, *Agnello* v. *United States*, No. 6, 1925 Term, p. 471.)
>
> • • • • • • •
>
> "Q. Up to that time had you heard any discussion about the sale of narcotics?
>
> "A. No, sir." (Id. at 473.) [4]

No distinction can logically be made between this sort of testimony and Walder's denial that he had possessed narcotics. If Agnello's denial was immune, Walder's should be as well. Neither waived his right to object. *Cf., Perlman* v. *United States*, 247 U. S. 7 (1918).

The authorities are unanimously against the Government's implied waiver theory. Evidence which is the result

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[4] And the Government put forward the same implied waiver argument in this Court:

> "It was only where the defendant, Frank Agnello, on the witness stand, resorted to obvious falsehoods, testifying that he did not know that he was carrying narcotics on the night of the arrest, that he had never seen narcotics before, and that he had never seen the can of cocaine hydrochloride until the trial—it was only then, in rebuttal of these statements, that the Government was permitted to give evidence that the can had been found in his room. . . . The evidence of the search was used only as a means of discrediting the witness, and was not used in any way either as a direct part of the Government's main case, or as an indirect clue toward obtaining other evidence." Res. Br., Record, *Agnello* v. *United States*, No. 6, 1925 Term, pp. 17-18.

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of an illegal search is just as inadmissible on rebuttal as it is on the prosecution's case in chief. It would serve no purpose to set out the language from the many opinions in this Court since *Boyd* v. *United States,* 116 U. S. 616 (1886), and *Weeks* v. *United States,* 232 U. S. 383 (1914), dealing with the inadmissibility rule. None imply that such evidence can ever be admitted; all state, in substance, that it is "clearly inadmissible," *e.g., Schwartz* v. *Texas,* 344 U. S. 199, 201 (1952), no matter how extreme the invitation by the defendant or how special the case. For plainly, any theory that the prosecution can submit testimony of an illegal search

> "reduces the Fourth amendment to a form of words. The essence of a provision forbidding acquisition of evidence in a certain way is not merely evidence so acquired shall not be used before the Court but that it shall not be used at all . . ." *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385, 392 (1920).[5]

We are unable to find a case where the Government's alleged exception has been approved in any other court. We have examined not only federal cases but decisions in those states which have adopted the federal rule.[6] Each one states that evidence obtained during an illegal search may not be adduced for any purpose. The texts and law review literature in the field are similarly unqualified.[7]

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[5] Silverthorne left no doubt that the evidentiary rule prohibits oral testimony as to the results of an illegal search and seizure, as well as introduction of the physical evidence. See, *e.g., United States* v. *Wallace & Tiernan Co.,* 336 U.S. 793, 796 (1949); *Nardone* v. *United States,* 308 U.S. 338 (1939); *Nueslein* v. *District of Columbia,* 115 F. 2d 690 (C.A.D.C., 1948).

[6] About half the states. See note, 150 A.L.R. 566 (1944), previous compilations there cited, and Appendix A to Opinion of the Court, *Wolf* v. *Colorado,* 338 U.S. 25, 33 (1949).

[7] Cornelius, Search and Seizure (2 Ed. 1930) §§ 7-10; Lasson, History and Development of the Fourth Amendment (1937); 1 Wharton, Criminal Evidence (11 Ed. 1935) §§ 373-375; 8 Wigmore (3 Ed. 1940) § 2184. Atkinson, Admissibility of Evidence Obtained Through Unreasonable

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Nor have any of the other constitutional or statutory rules of exclusion erected by this Court been so undermined. We know of no case involving coerced confessions in the states, or *McNabb* confessions or wiretap evidence in the federal courts, which have admitted such evidence "in rebuttal" after holding it incompetent on direct. Prosecuting attorneys have seldom attempted to push incompetent evidence through the back door as was done here and in *Agnello*. The only other reported example, apparently, is *Mahoney* v. *United States*, 26 F. 2d 902, 903 (C. A. 4, 1928), a case remarkably like this one. There, following testimony by a government "informer," defendant denied the charge of an illegal sale of whiskey to him. On cross-examination the prosecution asked whether or not agents had later found more whiskey in her house and when defendant denied this, adduced the testimony of the agents. The search was illegal. We reproduce a portion of the opinion of the unanimous Fourth Circuit because we think it illustrates how little merit the government's contention has:

> "The question, therefore, which we have to decide, is whether evidence obtained by an unlawful search, not admissible in chief, may be used on rebuttal for the purpose of contradiction. Undoubtedly a person accused of crime, who offers himself as a witness, occupies precisely the same position as any other witness, and may be examined as to any admissions he may have made, as well as to any contradictory

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Searches and Seizures, 25 Col. L. Rev. 11 (1925); Atkinson, Prohibition and the Doctrine of the Weeks Case, 23 Mich. L. Rev. 748 (1925); Chaffee, The Progress of the Law, 1919-1922, 35 Harv. L. Rev. 673, 694 (1922); Comment, Evidence, 42 Mich. L. Rev. 679 (1944); Comment, Pre-Indictment Suppression of Invalid Confessions, 56 Yale L. J. 1076 (1947); Corwin, The Supreme Court's Construction of the Self-Incrimination Clause, 29 Mich. L. Rev. 191, 203 (1930); Fraenkel, Concerning Searches and Seizures, 34 Harv. L. Rev. 361 (1921); Note, Admissibility in State Courts of Evidence Obtained by Unreasonable Searches and Seizures, 35 Minn. L. Rev. 457 (1951); Wingren, The Law of Searches and Seizures, 18 Rocky Mtn. L. Rev. 345 (1946).

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statements, and he may be examined generally as to all matters which affect his credibility, and, where the matter about which the accused is examined has direct relation to the charge on which he is being tried, it is, of course, competent to introduce evidence in contradiction; but it would be going very far to say that the rule ought to be extended to the point of allowing, under this guise, the admission of evidence which the court had already declared to be incompetent on the ground that it violated the Fourth Amendment, for it would be in effect to allow by an indirect method what admittedly could not be done by a direct method, and this the courts should be vigilant to oppose, 'nor can it be tolerated under our constitutional system, that evidences of crime discovered by a federal officer in making a search without lawful warrant may be used against the victim of the unlawful search, where a timely challenge has been interposed.' Byars v. United States, 273 U. S. page 28, 47 S. Ct. 248, 71 L. Ed. 520. And this applies equally to all stages of the trial. Silverthorne v. U. S., 251 U. S. 390, 40 S. Ct. 182, 64 L. Ed. 319; Watson v. U. S. (C. C. A.) 6 F. (2d) 870.

"In the case at bar, the evidence of the commission of the offense was wholly given by a witness who was himself a persistent violator of the liquor laws. As between his evidence and that of the defendant, the jury might very well have had a reasonable doubt; but, when his evidence was sought to be supplemented by that of the prohibition officer obtained by an illegal search, the prejudice of the rights of the accused was substantial, and in our opinion constituted error, for which the judgment below should be reversed.

"Reversed."

The authorities the Eighth Circuit thought "supported" the District Court do not do so. Only one even mentions the Fourth Amendment or the *Weeks* doctrine; all the rest deal with general evidentiary propositions quite out of the realm of the Constitution. And in that one exception, *Gibson* v. *United States*, 149 F. 2d 381 (C. A. D. C.) *cert. den. sub.*

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nom.; O'Kelley v. *United States*, 326 U. S. 724 (1945), the Court of Appeals for the District of Columbia actually reversed the admission of the only evidence which had been illegally obtained.

Apart from the constitutional prohibition, the federal rules themselves forbid the admission of this evidence. Rule 41(e) of the Federal Rules of Criminal Procedure provides:

> "If the motion [to suppress] is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial."

It would be difficult to imagine a clearer statement: The tangible evidence, if not contraband, is to be returned, and the fact of the discovery similarly wiped out for purposes of prosecution testimony. The history of the drafting of 41(e) sets at rest any doubt that this was the intent of the draftsmen. The rule, as worded in the Preliminary Draft (1943) was:

> ". . . shall not be admissible in evidence at any hearing or trial *of the proceeding in connection with which the seizure occurred.*" Advisory Committee, Federal Rules of Civil Procedure, Preliminary Draft (1943), Rule 33(e). (Emphasis added.)

See also Advisory Committee, Federal Rules of Criminal Procedure, Second Preliminary Draft (1944), Rule 43(e). Constitutional questions aside, this formula might have permitted the introduction of the 1950 evidence, since the trial was "in connection with" 1951 sales and not with the earlier seizure. But the Committee, quite consciously, deleted the italicized portion. Advisory Committee, Federal Rules of Criminal Procedure, Final Report (June 1944), Rule 43(e). The Rule now reads that illegally secured evidence is inadmissible at "any" trial; this Court did not adopt the above italicized qualification.

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The result urged would be no "small impingement" on the general rule of exclusion; it would destroy it, in every case where the defendant took the stand. If the defendant did no more than deny the charge the prosecution could introduce illegally seized evidence to show that his denial was not to be trusted. The illegal seizure would thus become a potent weapon in the hands of the prosecution; the defense would not dare permit the accused to testify on the stand. Such a result cannot be consistent with this Court's many professions that the Amendment is to be "liberally" construed.[8]

2. *Extrinsic Evidence Is Never Admissible for Impeachment*

Actually, the Government is seeking a good deal more in this case than just the repeal of the *Weeks* rule. In the *Agnello* case, for instance, the can of narcotics illegally seized which the Government sought to use for impeachment purposes was found in the defendant's bedroom on the very day of the sale charged in the indictment. Hence, if it was competent evidence under the exception to the *Weeks* rule which the Government urged, there was no question as to its relevance to prove the crime on trial. It did not (as the suppressed evidence here does) relate to a separate and distinct offense committed at a different time and place.

But in the case at bar, the illegally seized narcotics related to an offense charged in an indictment dismissed over a year before. It was a similar crime, but other than its similarity in character, it had no probative value to prove the charge on trial. Therefore, if its competency under the Fourth Amendment be conceded, it must nevertheless be excluded as irrelevant. Independent proof of a similar crime is not admissible in evidence unless it is tied so closely

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[8] *Go-Bart Importing Co.* v. *United States*, 282 U.S. 344, 357 (1931); *Gouled* v. *United States*, 255 U.S. 298, 304 (1921); *Grau* v. *United States*, 287 U.S. 124, 128 (1932); *Wolf* v. *Colorado*, 338 U.S. 25, 28 (1949).

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to the crime in chief that it shows a pattern of conduct probative of the main charge. The Government has not satisfied the strict requirements of this somewhat dangerous rule. It has shown no connection between the alleged crime of 1950 and the crime in this case other than the fact that they were both violations of the Narcotics Act. Our law has not yet recognized the presumption that once a dope peddler always a dope peddler.

Therefore, the evidence is inadmissible here on a separate ground apart from the Fourth Amendment. Its introduction was an attempt to try the defendant for a collateral crime the substance of which is not stated in the indictment. To say that a defendant, by asserting on the stand that he has never committed any crime in his life, thereby opens the door for the prosecution to prove any and all previous crimes on which it has evidence, and try them for the first time under the cloak of the doctrine of impeachment is to fly in the face of the Sixth Amendment.

But the admission of this evidence for impeachment would violate more than the Sixth Amendment. It would also repeal the long-established rule that the prosecution may not introduce extrinsic evidence of any sort on rebuttal, with the sole exception of an actual record of conviction, to contradict a defendant's testimony on a collateral issue. See 3 Wigmore (3 Ed. 1940) §§ 824, 877, 977-988, especially 977-979. As was said in *United States* v. *Klass*, 166 F. 2d 373, 376-7 (C. A. 3, 1948):

> "Except in the event of a record of conviction, contradictory extrinsic evidence is not admissible, it being long settled that the answer of a witness on cross-examination with respect to a collateral matter introduced for impeachment purposes concludes the inquiry."[9]

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[9] "It is competent for the purpose of discrediting a witness to show that he has been convicted of a crime. The general rule is that the crime

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If, in this case, the material illegally obtained had been a letter signed by the defendant admitting the crime in issue, only the Fourth Amendment would stand in the way of its use for impeachment. But here the prosecution must produce witnesses to prove the defendant lied on the collateral issue whether he had possessed narcotics during a period not charged in the indictment. A defendant in this situation would certainly be entitled to produce witnesses in defense and to complete the circle the prosecution should be allowed to produce more witnesses in rebuttal. And so the trial within a trial would go on.

Of course, it could not be called a trial of a previous offense without violating the prohibition of the principle of the Sixth Amendment that an indictment must give the substance of the offense which is to be tried. To invoke this principle on the ground that the issue raised was not actually a trial for the first offense but only impeachment of credibility would require an instruction like the following:

"The Jury is instructed that evidence of possession of narcotics by the defendant in 1950 is not to be taken as proof that the defendant committed a crime under the Narcotics Act in 1950, but only as evidence that the defendant lied when he said that he did not commit such an offense in 1950."

The Government has characterized the exception to the rule of exclusion which it urges here as only a "small impingement" of previously established principles. It seems

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must rise to the dignity of a felony or petit larceny. * * * Whatever may be the limit in this respect, nothing short of a conviction of a crime is admissible for the purpose of impeachment. A mere accusation or indictment will not be admitted, for the reason that innocent men are often arrested charged with a criminal offense." *Glover* v. *United States*, 147 Fed. 426, 429 (C.A. 8, 1906). See also, *Mitrovich* v. *United States*, 15 F.2d 163, 164 (C.A. 9, 1926); *Pearson* v. *United States*, 192 F.2d 681, 698-9 (C.A. 6, 1951).

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to us, however, that the Government is trying to admit a rather sizeable bull into the legal china shop. We await with interest an explanation of how this bull once admitted in this case can be prevented from running wild over the cherished heirlooms of the law.

3. *The Doctrine of Harmless Error Cannot Apply to This Case*

If it were ever held that the admission of illegally obtained evidence could be ignored on the ground that there was sufficient evidence to convict apart from that evidence, the rule would be no longer a deterrent to illegal searches and seizures.[10] The Government could always argue that the corroboration of its stool pigeon testimony by additional evidence gleaned from an illegal search was not serious enough to affect the verdict. And how could the Court ever ascertain whether this was true.[11] Limiting instructions to

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[10] No constitutional rule of evidence has ever been so determined. *Stein* v. *New York*, 346 U.S. 156, 193 (1953), the Court's recent New York confession case, is no exception. The Court said:

> ". . . we base our decision, not upon grounds that error has been harmless, but upon the ground that we find no constitutional error."

We have examined a great number of federal wire tapping, search and seizure and illegal detention cases and have found only *United States* v. *Reed*, 96 F. 2d 785 (C.A. 2), cert. den., 305 U.S. 612 (1938), holding evidence, incompetent under one of these rules (the purely nonconstitutional prohibition against wire tappping), harmlessly admitted though not cumulative. See also note 11, *infra*.

[11] *See Kotteakos* v. *United States*, 328 U.S. 750, 764 (1946). "For a variety of reasons relating not only to probative value and trustworthiness, but also to *possible prejudicial effect upon a trial jury* and the absence of opportunity for cross-examination, the generally accepted rules of evidence throw many exclusionary protections about one who is charged with and standing trial for crime. Much evidence of real and substantial probative value goes out on considerations irrelevant to its probative weight but relevant to possible misunderstanding or misuse by the jury." *Brinegar* v. *United States*, 338 U.S. 160, 173 (1949). (Emphasis added).

The situation illustrated by *Honeycutt* v. *United States*, 277 Fed. 941

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the jury to ignore the 1950 possession in deciding whether Walder made the 1951 sales, to quote Judge Frank, are like the Mark Twain story of a "boy told to stand in the corner and not think of a white elephant." *United States* v. *Antonelli Fireworks Co.*, 155 F. 2d 631, 656 (C. A. 2), *cert. den.*, 329 U. S. 742 (1946). See also Mr. Justice Jackson in *Krulewitch* v. *United States*, 336 U. S. 440, 453 (1949). If it be argued that the innocent are protected since even an illegal search would not obtain drugs from persons who do not possess them, the answer is that the *Weeks*

> ". . .guarantee of protection against unreasonable searches and seizures extends to the innocent and guilty alike." *McDonald* v. *United States*, 335 U. S. 451, 453 (1948).

Whatever its common-sense usefulness as to ordinary evidentiary problems, the doctrine of "harmless error" should have no place in constitutional rules. See *Kotteakos* v. *United States*, 328 U. S. 750, 764-765 (1946). These are far from the technical matters, see 28 U. S. C. (1946 Ed.), § 391, 45 Stat. 54, and its history, with which the doctrine is designed to deal. Rule 52(a), F. R. Crim. P., describes it as reaching "[a]ny error, defect, irregularity or variance which does not affect substantial rights." The right of the Fourth Amendment to be free of unreasonable searches and seizures, and to have evidence thereof withheld in the federal courts, is, we think, "substantial."

(C.A. 4, 1921) is easily distinguished. Certain checks, previously suppressed as evidence, were introduced. Defendant had already admitted the payments. Sensibly enough, the Court held the admission not prejudicial. In this case, though, Walder denied the fact that he had turned over the capsule in 1950.

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Conclusion

We can best close by repeating the words of the late Chief Justice Vinson in *Nueslein* v. *District of Columbia*, 115 F. 2d 690 (C. A. D. C., 1940):

> "At common law evidence is admissible no matter how obtained. But we are living under more than common law . . . Under the federal rule some illegally obtained evidence is inadmissible, inadmissible because of the IVth Amendment. Critics may assail this rule but it is well established . . .
>
> "[T]he protection granted by constitutional provisions must not be dealt with as abstractions. A simple, effective way to assist in the realization of the security guaranteed by the IVth Amendment, in this type of case, is to dissolve the evidence that the officers obtained after entering and remaining illegally in the defendant's home. Id. at 694-695.
>
> ". . . [I]s it more important to effectuate the vital constitutional policy of security in the home from general investigations directed toward the hope that some evidence will turn up, or the policy that all misdemeanants be brought to task. We feel that the policy of making effective in concrete cases 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, * * *' to be the more important." Id. at 696.

The judgment below should be reversed.

PAUL A. PORTER,
Counsel for Petitioner.

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APPENDICES

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Appendix A

RECORD OF THE 1950 PROCEEDINGS

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI

No. 17,751

THE UNITED STATES

vs.

SAM WALDERS

Vio.: Sec. 2553, T. 26

Illegal Sale of, and Purchase and Possession of Heroin Hydrochloride—2 Counts

PROCEEDINGS

Feb. 23, 1950, Commissioner's transcript filed.

May 3, 1950, Indictment filed.

May 4, 1950, The defendant appears in open court with counsel, waives formal arraignment and enters a plea of not guilty. Case set for trial May 16, 1950. Appearance bond to remain same and to be taken by the United States Commissioner. Old bond exonerated. Appearance bond filed. Order for return of cash bail (old bond) filed.

May 11, 1950, Motion for bill of particulars filed. Memorandum brief in support of motion for bill of particulars filed. Motion for return of seized property and suppression of evidence filed. Memorandum brief in support of motion for return of seized property and suppression of evidence filed. Motion to dismiss count 1 of the indictment filed. Motion to dismiss count 2 of the indictment filed. Memorandum brief in support of motion to dismiss the indictment filed.

May 12, 1950, Defendant appears in open court with counsel, and by leave of Court withdraws his plea of not guilty and refiles the motions that were heretofore filed.

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Plea of not guilty entered. Hearing on motions—Each side presents testimony. Defendant is permitted by the Court to amend his motion for return of seized property. Arguments of counsel presented. Case submitted to the Court, and taken under advisement.

May 15, 1950, Suggestions of the U. S. Attorney in opposition to defendant's motion for return of seized property and for suppression of evidence filed.

May 25, 1950, Order, sustaining the defendant's motion to suppress the evidence as to count 2; and overruling the motion for the return of seized property, and overruling motions to dismiss the indictment and counts 1 and 2 thereof, filed.

July 7, 1950, Case dismissed in open court by Judge Duncan upon recommendation of the Attorney General.

* * * * * * *

MOTION FOR THE RETURN OF SEIZED PROPERTY AND THE SUPPRESSION OF EVIDENCE

[Caption omitted]

Sam Walders, hereby moves this court to direct that certain property of which he is the owner, namely; one (1) grain of Heroin Hydrochloride, and which on the morning of February 20, 1950, at the premises known as 2620 Prospect, Apt. #3, Kansas City, Missouri, in the Western District of Missouri, Western Division, was unlawfully seized and taken from him by two Federal Narcotic Agents, one of whose last name is Follmer and the name of the other said Federal Agent being unknown to the petitioner, be returned to him and that it be suppressed as evidence against him in any criminal proceeding.

The petitioner further states that the property was seized against his will and without a search warrant.

The petitioner attaches hereto his affidavit setting forth facts of his own personal knowledge, showing the circumstances of said unlawful seizure.

FRANCIS L. ROACH,
1210 Commerce Building,
Kansas City, Missouri,
Attorney for Defendant.

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Defendant hereby requests oral argument on the above motion.

FRANCIS L. ROACH,
1210 Commerce Building,
Kansas City, Missouri,
Attorney for Defendant.

"Filed in the U. S. District Court on May 10, 1950."
"Refiled on May 12, 1950."

* * * * * * *

AFFIDAVIT

STATE OF MISSOURI,
County of Jackson, ss:

Sam Walders of lawful age being first duly sworn upon his oath, states:

On Sunday, February 19, 1950, at about 9 P. M., I went to the Union Station at Kansas City, Missouri, to meet my wife Freda Walders, who was arriving from Chicago. I traveled to the Union Station in my automobile with a friend named Marvin Booker.

After I met my wife, my wife, Booker and I went to my car and as I was leaving the Union Station parking lot, another car blocked my car and prevented me from proceeding further. Mr. Follmer and another Federal Narcotic Agent got out of the car which had blocked us, and Mr. Follmer and the other agent proceeded to search all three of us, but found nothing by way of narcotic drugs. The said Federal Agents then took all three of us to the City Jail where we were confined about 10 P. M., and later we were taken to the County Jail and booked in.

At about 2 A. M. Monday, February 20, 1950, the two said Federal Agents took me from the County Jail after handcuffing me. The two Federal agents had with them two Deputy Sheriffs whose last names are Delahunty and Brice. The four of them took me from the County Jail without telling me where we were going. The four of them took me in a car to my apartment at 2620 Prospect, Apt. #3, Kansas City, Missouri. The Federal Agents used the key which they had taken from me at the time of my confinement at

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the City Jail to get into my apartment. The Federal Agents then proceeded to search my apartment, and, as a result of that search they found one (1) grain of Heroin Hydrochloride.

I did not, at any time, authorize or consent to the search of my apartment above described. Neither of the Federal Agents, nor the said Deputy Sheriffs, displayed any search warrant to me. According to the best of my information and belief they did not have any search warrant for said search.

Further Affiant Saith Not.

SAM WALDERS.

Subscribed and sworn to before me this 10th day of May, 1950.

DOROTHY H. FORLOW,
[SEAL.] *Notary Public.*

My Commission expires: March 23, 1954.
Filed in the U. S. District Court on May 10, 1953.
Refiled on May 12, 1953.

* * * * * * *

RECORD ENTRY

Friday, May 12, 1950.

[Caption omitted]

Now, on this 12th day of May, 1950 comes the parties of the above entitled cause into open court, the defendant in person and by counsel, Mr. Francis Roach, the Government by the United States District Attorney for the Western District of Missouri. Case is called, whereupon Counsel for defendant, by leave of Court withdraws his plea of not guilty heretofore entered and refiles the following motions: Motion to Dismiss Count I and II of the Indictment; Motion for a Bill of Particulars with Memorandum in support; Motion for return of seized property and for suppression of the evidence and memorandum in support; Defendant reenters his plea of not guilty to the counts in the indictment. Hearing on refiled motions is had. Testimony is presented on behalf of the defendant and the defendant rests. Testimony is presented on behalf of the plaintiff and the plaintiff rests. At the conclusion of the foregoing proceedings,

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the defendant asks permission to amend the Motion for return of seized property and for suppression of the evidence and memorandum in support, which permission is by the Court granted, and after oral arguments the Court takes the motions under advisement and the cause is passed for resetting, pending the Court's decision.

* * * * * * *

ORDER

[Caption omitted]

Plaintiff was indicted on two counts charging that on or about the 17th day of February, 1950, the defendant "did sell three and one-half (3½) grains of Heroin Hydrochloride, the same not being in the original stamped package as required by law," and the second count charging that on or about the 18th day of February, 1950, the defendant "did purchase and possess one (1) grain of Heroin Hydrochloride * * * "

The home of the defendant was searched by deputy sheriffs and narcotic agents on the night of February 18, 1950, and one grain of heroin was found. The defendant has filed a motion to suppress the evidence.

There is little dispute as to the facts. On the evening of February 19, 1950, about 9:00 o'clock P. M., the defendant, his wife and another person were arrested at the Union Depot in Kansas City by Federal Narcotic Agents. A cursory search of the parties was made, but no narcotics were found. The agents had theretofore had information indicating that the defendant and the parties had been guilty of possessing and selling narcotics, and under the law they were entitled to make the arrest.

The defendant and the other parties arrested were taken to the city jail in Kansas City, Missouri, where they were booked and their possessions taken from them, including the keys to the defendant's home.

About midnight, two narcotic agents and two deputy sheriffs, the latter being investigators for the sheriff's office who had worked on the case, took the defendant from the city jail to the county jail. The defendant was handcuffed, and one of the deputy sheriffs requested of the property custodian, the key to the defendant's home.

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Some time prior to these occurrences, the defendant had advised the officers that his residence was on Tracy Avenue. After the deputy sheriff had requested the keys from the property custodian, he stated that they were going to search the residence of the defendant. At that time, the defendant told them to "go ahead and search; but you won't find anything."

Thereupon the two agents and the two deputy sheriffs placed the defendant, still handcuffed, in an automobile and started to the address which had been given by the defendant. As they approached the address, the defendant stated —"I do not live at that address, there is no use to disturb my sister and brother-in-law. I live at 2620 Prospect." Thereupon the officers proceeded to the latter address, apartment 3. Upon their arrival, one of the officers attempted to unlock the door, but was unable to get the key to work. Whereupon the defendant, still handcuffed, took the key and opened the door, admitting the officers.

After the search was under way, the defendant observed that this was the home of himself and his wife and he didn't want it torn up, and stated that there was one grain of heroin at a certain place in the apartment. Upon a search of that particular place, a grain of heroin was found. One of the officers testified that they were getting ready to search that place when the defendant told them that the heroin was there.

It is admitted by the plaintiff that the search of the premises was not incidental to the arrest. The officers admitted that they had no reason to suspect or to believe that there was any heroin concealed in the defendant's home.

Unquestionably the motion must be sustained. No search warrant was obtained. The search was in the middle of the night, while defendant was handcuffed and in the custody of four officers.

It is suggested by the Government that the defendant gave consent to the search by making the statement "go ahead and search; but you won't find anything." I am unable to agree with that contention. More than casual acquiescence by one under arrest is required to give consent to a lawful search.

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In this case, as heretofore stated, the defendant not only was under arrest, but he was handcuffed and the statement had already been made by one of the officers that they were going to search his residence. I think it perfectly obvious to anyone that a search would have been made whether the defendant gave his consent or not. The fact that he gave the officers his correct address instead of the erroneous address first given by him, I think is not justification for determining that he did consent to the search.

The defendant and his wife were both in custody. If the officers had reason to believe that narcotics were concealed in his home, a search warrant could have been obtained long prior to the time when it would have been necessary to release the defendant, without a charge having been filed against him.

The motion to suppress the evidence as to Count II of the Indictment is therefore hereby sustained, and the motion for return of the seized property is hereby overruled.

The Motions to Dismiss the Indictment and Counts I and II thereof are also hereby overruled.

R. M. DUNCAN,
District Judge.

Dated: May 25, 1950.
Filed in the U. S. District Court on May 25, 1950.

* * * * * * *

RECORD ENTRY

Friday, July 7, 1950.

[Caption omitted]

Now, on this 7th day of July, 1950, upon the recommendation of the Attorney General of the United States, comes the United States District Attorney for the Western District of Missouri and moves the Court for Dismissal of the above cause,

It is therefore, Ordered that this cause be and the same hereby is dismissed.

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Appendix B

FOURTH AMENDMENT CASES
Since *Harris* v. *United States*

Harris v. *United States,* 331 U. S. 145 (1947)

Illegal draft cards seized during lawful arrest under warrant charging mail fraud. Seizure held valid and evidence admissible.

United States v. *Di Re,* 332 U. S. 581 (1948)

Counterfeit gasoline coupons seized from passenger incident to lawful search of an automobile. His arrest and search held illegal and the evidence inadmissible.

Johnson v. *United States,* 333 U. S. 10 (1948)

Arrest and search made when agents smelled opium smoke outside defendant's room. Arrest held without probable cause and the evidence inadmissible.

Trupiano v. *United States,* 334 U. S. 699 (1948)

Search of an illegal still made without a warrant but contemporary with lawful arrests. Evidence held procured in violation of Fourth Amendment and inadmissible.

McDonald v. *United States,* 335 U. S. 451 (1948)

Search made without warrant but contemporary with lawful arrest by agents who forced their way into apartment building. Evidence held illegally procured and inadmissible.

Brinegar v. *United States,* 338 U. S. 160 (1949)

Arrest and seizure of illegal liquor on a moving truck. Held justified by probable cause and evidence admissible.

United States v. Rabinowitz, 339 U. S. 56 (1950)

Valid arrest and search nearby desk containing forged postage stamps. Seizure held incident to arrest and evidence admissible.

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On Lee v. *United States*, 343 U. S. 747 (1952)

Broadcast of conversation from hidden radio on agent's person held not the result of a trespass and transcript admissible.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 121

SAM WALDER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals (R. 185–190) are reported at 201 F. 2d 715.

JURISDICTION

The judgment of the Court of Appeals was entered on February 19, 1953 (R. 190). On March 16, 1953, the time for filing a petition for a writ of certiorari was extended by order of Mr. Justice Clark (R. 191) to April 20, 1953, on which date the petition was filed. The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

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QUESTIONS PRESENTED

1. Whether the exclusionary rule, which forbids the use of evidence obtained in violation of the Fourth Amendment, is absolute, so as to preclude, in a trial involving another narcotics offense, the use in rebuttal of knowledge gained in the procurement of such evidence for the limited purpose of impeaching petitioner's direct testimony that he never possessed or dealt in narcotics.

2. Whether such evidence was proper impeaching evidence.

3. Whether, if there was error in the admission of such evidence, it was harmless, under the circumstances of the case, in view of the Government's overwhelming evidence in its case in chief, and the mere cumulative nature of the questioned rebuttal testimony.

CONSTITUTIONAL PROVISION AND RULE INVOLVED

The Fourth Amendment to the Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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Rule 41 (e), F. R. Crim. P., provides:

> **Motion for Return of Property and to Suppress Evidence.** A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

STATEMENT

On January 18, 1952, a four-count indictment was filed against petitioner in the Western Dis-

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trict of Missouri, charging him with violating 26 U. S. C. 2554 (a), in that, on four separate occasions during the first half of 1951, he did sell, in Kansas City, Missouri, varying quantities of heroin, a derivative of opium (R. 5–6).

On January 30, 1952, following a trial by jury, petitioner was found guilty on all four counts (R. 13, 14, 183) and sentenced to 5 years' imprisonment on each, the first three terms to run consecutively and the last one to run concurrently with the others (R. 13–14, 185).

The evidence adduced at the trial may be summarized as follows:

The Government's evidence.—Count I: During the evening of January 9, 1951, narcotics agents Follmer, Hall and Witt met by prearrangement, on a street in Kansas City, Missouri, one Jenkins, a drug addict (R. 45, 56, 57–58, 87, 91, 117–118). They instructed Jenkins to attempt to purchase some heroin from petitioner (R. 45, 88, 118). After an unsuccessful attempt to locate petitioner that evening, Jenkins learned, after midnight, that petitioner had left a certain tavern to return to his apartment (R. 45, 88, 118). The agents then drove Jenkins to the vicinity of petitioner's apartment, where Witt's search of Jenkins assured the agents that he had no narcotics or money in his possession (R. 45, 88–89, 118). Jenkins was furnished $10.00 from "official advance funds" with which to purchase heroin from petitioner (R. 45, 89, 118–119). About 1 a. m.,

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January 10, 1951, the agents saw Jenkins enter the apartment building, where petitioner maintained his residence on the second floor (R. 46, 89, 90, 119). They kept the building under surveillance, from a point across the street, during the time that Jenkins remained therein (R. 47, 119). Shortly after Jenkins entered the building, the agents saw petitioner come out of the building with a large dog, stand on the corner for a few minutes, and reenter the building (R. 46, 119).

Jenkins testified that, after receiving $10.00 from the agents, he went to petitioner's apartment, where petitioner told him that "he had to go to a stash" to get the heroin (R. 89–90). Petitioner then left the apartment with his dog (R. 90). Jenkins remained therein alone for a while until petitioner returned with two packages (R. 90). Petitioner, after mixing the heroin from one package with milk sugar from the other package, gave the mixture to Jenkins in exchange for the $10.00 (R. 90–91). Jenkins then left the apartment and returned to the agents' automobile, where he surrendered to agent Witt a package, which contained five grains of heroin (R. 46–47, 48, 91, 119–120).[1] Then Witt, after again searching Jenkins, ascertained that the latter no longer

[1] The testimony of the chemist who made the analysis of the narcotics has not been incorporated in the printed record. It appears on pages 241–245 of the typewritten transcript of the testimony and proceedings in the trial court, a copy of which has been lodged in this Court.

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had the $10.00 and that he did not have any other narcotics on his person (R. 47, 91, 119).

Count II: Sometime prior to April 10, 1951, petitioner had asked one Taylor, a drug addict, to become a narcotics dealer for him (R. 99–100, 108). On April 10, 1951, petitioner gave Taylor his telephone number, which was not listed in the directory, and advised Taylor to call him for arrangements to receive narcotics (R. 100–101, 120, 154–155).

About 2 p. m. on April 11, Taylor met agents Follmer, Hall and Witt at a pre-determined street location in Kansas City, Missouri (R. 48, 100, 120). Witt accompanied Taylor to a drug store, where the latter called the unlisted telephone number and made arrangements with petitioner to receive narcotics from him at the Green Duck Tavern (R. 48, 101, 121, 134–135).[2] The agents then drove Taylor to the vicinity of the tavern, where Witt's search of Taylor revealed that he had no narcotics or money in his possession (R. 48, 101, 121). Taylor, after receiving from Witt $20.00 for the purpose of buying narcotics from petitioner, entered the Green Duck Tavern, while the agents secreted themselves in a laundry shop across the street (R. 48, 101–102, 121). Shortly thereafter, petitioner called Taylor over the tavern telephone, informing him that

[2] Agent Witt either dialed or observed the dialing of the unlisted number, and overheard Taylor's end of the conversation (R. 121, 134–135).

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petitioner would be late (R. 102). Taylor then, by a telephone call to Follmer in the laundry shop, relayed the information to the agents (R. 48, 102, 121). A few minutes later petitioner again telephoned Taylor in the tavern, asking Taylor to meet him at the Santa Fe Tavern, a little more than a block away (R. 102). Taylor returned to the agents' automobile, where another search by agent Witt disclosed that Taylor had no narcotics on his person and that he still had the $20.00 in his possession (R. 48, 102, 121–122).

The agents then drove Taylor to the Santa Fe Tavern, which he entered, as the agents watched from a short distance away (R. 48–49, 102, 122). After waiting about 20 minutes for petitioner, Taylor left the tavern (R. 49, 102, 122). As he reached the street, observed by the agents, he saw petitioner looking in his direction from "across the street as though he was getting ready to cross" (R. 102, 49, 122). Thereupon, Taylor reentered the tavern, followed closely by petitioner (R. 49, 102–103, 122). Taylor joined petitioner at the bar, and, while drinking beer, Taylor handed petitioner $20.00 in exchange for a package, which contained ten capsules of heroin (R. 103, 49, 122). Taylor then returned to the car, observed by the agents, and surrendered the package to Witt, who, upon searching Taylor again, failed to discover any money or narcotics on him (R. 49, 103, 122–123).

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Count III: The following evening, April 12, 1951, the same three narcotics agents, together with agent Shattuck, again met Taylor at the same street location (R. 49–50, 103–104, 123). Agent Witt and Taylor proceeded to a drug store, from which the latter called petitioner's unlisted telephone number and arranged to purchase more drugs from petitioner at the Green Duck Tavern (R. 50, 104, 123). The agents then drove Taylor to the vicinity of the tavern, where he was searched with negative results and given $20.00 (R. 50, 104, 123–124). At the tavern, Taylor received a telephone call from petitioner, who asked him to go to Wilson's Bar, "over a mile" away (R. 104–105). Taylor was then driven to the vicinity of Wilson's Bar, where Witt, after searching Taylor again, ascertained that he still had the $20.00 in his possession (R. 50, 105, 124). The agents then observed Taylor as he entered the barroom (R. 50, 124–125). In the "men's restroom" of the bar, Taylor paid $20.00 to petitioner, who pulled out a package, containing 10 capsules of heroin, from under the face bowl and handed it to Taylor (R. 105, 125). At the same time petitioner told Taylor that in the future he would have to buy in amounts of at least $50.00 (R. 105–106). Taylor then left the bar, observed by the agents, and returned to the agents' automobile, where Witt, after receiving the package from him, found no other narcotics and no money on his person (R. 50–51, 106, 125).

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Count IV: In the afternoon of May 8, 1951, agents Follmer, Witt and Shattuck again met Taylor at the same rendezvous, for the purpose of making another purchase of drugs from petitioner (R. 51, 106–107, 126). Agent Witt again accompanied Taylor to a drug store, where the latter, after calling petitioner at his unlisted telephone number, was instructed by petitioner to come to his apartment for narcotics (R. 51, 107, 126). The agents then drove Taylor to the vicinity of petitioner's apartment, where Witt, after ascertaining through a search of his person that Taylor had no narcotics, gave him $50.00 (*ibid.*). The agents observed Taylor enter the building, wherein petitioner maintained an apartment (R. 51, 126–127, 107). In his apartment, petitioner handed Taylor a package for which the latter gave him $50.00 (R. 108). Since the package contained only 8 capsules of heroin, Taylor requested and received a refund of $34.00 (the wholesale price being $2.00 per capsule) (*ibid.*). Taylor then returned to the agents' car, where he gave Witt the package containing 8 capsules of heroin, and $34.00 (R. 52, 127–128). Witt's search of Taylor revealed no other narcotics or funds on his person (R. 52, 127).[3]

[3] The testimony of agent Hall, who testified with respect to the January 10, April 11, and April 12 transactions, and agent Shattuck, who testified concerning the April 12 and May 8 transactions, was to the same effect as the testimony of agents Follmer and Witt with respect to those transactions. Their testimony has not been incorporated in the

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Evidence for the defense:—Petitioner, the only witness for the defense, testified in his own behalf (R. 137–169). He denied that he made the various sales of heroin (R. 137). And, among other things, he also testified on direct examination, as follows (R. 137–138):

> Q. Now, first, Mr. Walder, before we go further in your testimony, I want you to tell the Court and jury whether, not referring to these informers in this case, but whether you have ever sold any narcotics to anyone.
>
> A. I have never sold any narcotics to anyone in my life.
>
> Q. Have you ever had any narcotics in your possession, other than what may have been given to you by a physician for an ailment?
>
> A. No.
>
> Q. Now, I will ask you one more thing. Have you ever handed or given any narcotics to anyone as a gift or in any other manner without the receipt of any money or any other compensation?
>
> A. I have not.
>
> Q. Have you ever even acted as, say, have you acted as a conduit for the purpose of handing what you knew to be a narcotic from one person to another?
>
> A. No, sir.

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printed record. It appears on pages 247–273 of the typewritten transcript of the testimony and proceedings in the trial court.

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With respect to the foregoing testimony he was cross-examined as follows (R. 161–163).

Q. Now, I believe that you testified on direct testimony that you have never had anything to do with narcotics, is that correct?

A. Yes, sir.

Q. Ever possessed any?

A. No, sir.

Q. Or had any in your possession?

A. Not in my possession, no, sir.

Q. Ever sell any?

A. No, sir.

Q. Ever buy any?

A. No, sir.

Q. Where were you living in February, 1950?

A. I think I was living at 2620 Prospect.

Q. What apartment?

A. Apartment 3.

Q. Where was that?

A. It is on the second floor.

Q. Do you know Mr. Witt and Mr. Follmer?

A. I have saw them before.

Q. Do you recall going to your apartment with them on the evening of February 19th or early in the morning of February 20, 1950?

Mr. ROPE. Now, if it please the Court, again I wish to object to this statement on the part of the witness. In the first place, any previous relationship which he wishes to inquire about with these officers is not

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within the issues of this case whatsoever. I think that is certainly true. He is referring to a date back in 1950.

The COURT. The witness has testified today on cross examination. He testified on direct examination yesterday that he had never had anything to do with narcotics other than a doctor's prescription. I assume from what the Court must know, what counsel for the Government has in mind, and I think for that purpose it is a perfectly legitimate question.

Mr. ROPE. Well, I will withdraw the objection until I hear the rest of the question.

The COURT. That is all right, if you want to argue the question we will excuse the jury and let you make the argument about it. I don't want to prejudice your client's case about it, but I say the Court must know, and in connection with the matter I assume what counsel has in mind. So counsel ask the question and then if you want to argue it, your legal phase of it, the Court will hear you out of the presence of the jury.

Mr. ROPE. Yes.

By Mr. AULL:

A. I think the question—I will rephrase the question. I will ask you whether or not the evening of February 19th or early in the morning of February 20th, in the company of Agents Follmer and Witt of the Narcotics Bureau here in Kansas City, Missouri, you went to your apart-

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ment at 2620 Prospect here in Kansas City, Missouri?

A. Did I go there with them?

Q. Yes.

A. Yes.

* * * * *

Q. Now, when you arrived at that apartment, I will ask you, Mr. Walder, whether or not you turned over to them 1 grain of heroin?

A. I did not.

Q. You did not, you deny that categorically?

A. Yes, sir.

Q. Now, I will ask you if on that occasion prior to arriving you stated to these officers that should they find any narcotic drugs in this apartment, that they were your property and your wife, Freda, was in no way responsible for any drugs which might be found?

A. I don't recall any such conversation.

Q. Do you deny that?

A. I deny.

Q. You recall going out there with the officers?

A. Yes, sir.

Q. Do you recall any narcotics being obtained at that time?

A. I do not.

Q. Do you deny it?

A. I deny it.

At this point, petitioner's counsel objected to this line of questioning (R. 163). In the ensuing dis-

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cussion, out of the presence of the jury, the trial judge took judicial notice of his own order, issued in May 1950, whereby he had suppressed, on the grounds of illegal search and seizure, the use in evidence of the same narcotics to which the cross-examination related (R. 163–164).[4] However, the judge held in the instant case that, since petitioner opened up the subject by testifying that he had never had anything to do with narcotics, he could be cross-examined concerning the suppressed narcotics for the sole purpose of impeaching him as a witness (R. 164–165, 166). Upon its resumption, the cross-examination continued as follows (R. 165–168):

> Q. I will ask you, Mr. Walder, whether or not when you went to your apartment at 2620 Prospect in Kansas City, Missouri, either on the late evening of February 19th or early on the morning of February 20th, in company with Narcotic Agents Witt and Follmer and two deputy sheriffs, whether or not at that time, whether or not you told them that should they find any narcotic drugs on the premises that they were your property and that your wife, Freda, was in no way responsible for any drugs which might be found?
>
> Mr. ROPE. Now, if it please the Court, I believe that the defendant would like to make objection at this time to that question

[4] This order is printed in the Appendix to petitioner's brief, pp. 25–27.

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as being prejudicial, inflammatory and an attempt to prove prior arrest by innuendo, and it is a matter constituting no evidence whatsoever in this case. It is entirely immaterial, incompetent and irrelevant and places such a prejudice in the minds of this jury against this defendant that no charge on the part of the Court can possibly cure it, and the defendant asks at this time that the jury be discharged.

The COURT. The objection will be overruled in both instances and the Court will say that the testimony, the question is being permitted, and if there should be further testimony concerning it, it will be admitted solely by way of impeachment of the witness' statement that he had never had anything to do or any connection with narcotics. It is not for the purpose of determining the exact guilt or the innocence of any of these acts in this information, but in view of the witness' testimony, the defendant's testimony that he had never had anything to do with narcotics except, as the Court recalls the language, "as prescribed by a physician." This testimony is being admitted in that connection. In view of his denial of that, the objection will be overruled. Proceed.

The WITNESS. What was the question again?

By Mr. AULL:

Q. Whether or not on the late evening of February 19th or early February 20, 1950,

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that you, in company with Agent Follmer and Agent Witt of the Narcotics Bureau, together with deputy sheriffs of Jackson County, went to your apartment at 2620 Prospect and on the way to that apartment that you made the statement to them that should they find any narcotic drugs there, that the same were your property and that your wife, Freda, was in no way responsible for any drugs which might be found?

A. I made no such.

Q. You made no such statement. Now, I will ask you, Mr. Walder, whether you recall visiting the office of the Bureau of Narcotics on February 24, 1950?

A. I do not.

* * * * *

Q. Referring to the question that on the 24th of February, 1950, you made, in substance, the following statement to Agents Follmer, Witt, and Shattuck at the office of the Bureau of Narcotics in this building here in Kansas City, that you had previously purchased heroin from several persons in Chicago in rather large amounts, and explained that you meant by that from one to two ounces at a time, and that you were well acquainted with the big narcotic peddlers of Chicago, and that you were solid with these contacts; further, that if you were to assist the Government in the purchase of heroin by you, you would have to have not less than one ounce as you were known as a wholesaler dealer and it would

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not be logical for you to attempt to purchase heroin in quantities of less than one ounce. Did you make that statement?

A. May I answer that question in full?

Q. You certainly may.

A. I was approached by Mr. Follmer and asked if I would be a stool pigeon and I told him——

Q. (Interrupting.) I am asking you——

The COURT. (Interrupting). Did you make this statement?

A. No, I did not make that statement. He approached me and asked me that.

The COURT. Now, make such explanation as you want to make in this connection with it.

The WITNESS. Did you say you——

The COURT. I said if you can, if there is any explanation you want to make——

A. I was approached by Mr. Follmer, who asked me if I would assist him in making some buys and I told him I couldn't do it because I didn't know any. He said if I would, he would give me a break and I wouldn't have to be doing any time for the charge they were charging me with.

By Mr. AULL:

Q. I am going to ask you, Mr. Walder, whether or not you voluntarily came to the office of the Bureau of Narcotics on February 24, 1950, without any solicitation and make the statement that I have just stated?

A. I did not.

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On redirect examination petitioner again denied making any statements to narcotics agents (R. 168).

The Government's rebuttal.—Agent Witt testified, without objection, that early in the morning of February 20, 1950, petitioner, while on the way to his residence in the company of agents Witt and Follmer and two deputy sheriffs, told them that whatever narcotics they might find belonged to him, and not his wife (R. 173). On arrival in the apartment, petitioner handed agent Follmer a capsule containing 1.1 grains of heroin (R. 174, 175).

Agents Witt and Shattuck also testified that on February 24, 1950, petitioner came to their office, where he told them "that he was well acquainted with the big narcotic peddlers of Chicago" from whom "he had previously purchased heroin" in quantities of "one to two ounces at a time", and "that if he were to assist the Government, any purchases of heroin by him would have to be in quantities of not less than one ounce for he was known as a wholesale dealer, and it would not be logical for him to attempt to purchase heroin in quantities less than one ounce" (R. 174, 170).

In his charge to the jury, the judge again instructed them that the testimony "concerning certain alleged admissions and certain other evidence with respect to the former possession of narcotics" was allowed, not as "proof of the guilt

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of the defendant in this particular case, but that it was admitted simply by way of impeachment if it was, if you believe it" (R. 181).

On appeal, the judgment of conviction was affirmed by a divided court. The majority held that the testimony concerning the 1950 seizure of narcotics was properly allowed for the limited purpose of impeachment (R. 188, 190). Judge Woodrough, in his dissent, stated simply that he thought "the fruits of the illegal search of the appellant's home were erroneously received in evidence against him" (R. 190).

SUMMARY OF ARGUMENT

I

The principle question in this case relates to the admissibility in rebuttal of testimony concerning heroin found in petitioner's apartment, the use of which as evidence had previously been suppressed. The District Court allowed testimony as to this matter to be elicited solely as bearing on the issue of petitioner's credibility, because petitioner on his direct examination had voluntarily testified that he had never possessed, handled or dealt with narcotics, testimony which the District Court knew from the prior proceeding to be utterly false.

The Government's basic position is that the exclusionary rule does not extend so far as to enable a defendant to use it as a cover for the commission of perjury. To do so would transform the

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exclusionary rule, which is designed to provide a deterrent to illegal action by law enforcement officers, into an instrument for the perversion of truth. The exclusionary rule protected petitioner, as a defendant, from conviction for the 1950 possession of narcotics; it should not also grant him, as a witness, immunity to testify falsely while on trial for his sales of other narcotics in 1951.

Even with respect to the privilege against self-incrimination, the rule of most state courts where the question has arisen is that any testimony by a witness as to a particular transaction waives the privilege completely as to all other inquiries pertinent to that transaction on the theory that injustice would result if a witness were permitted to stop after telling only part of his story. The same rationale applies here. After petitioner deliberately opened up the subject of his prior possession of narcotics, the court should not be precluded from considering the suppressed evidence for the limited purpose of nullifying the effect of petitioner's deliberate lie. This Court in *Agnello* v. *United States,* 269 U. S. 20, although holding the principle inapplicable to the facts of that case, implicitly recognized that, where direct testimony opens the door to a particular transaction, admission of suppressed evidence with respect thereto might be justified. The Government is not here contending for any departure from the general rule of exclusion. We contend merely

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that suppressed evidence may be used to the extent necessary to neutralize affirmative perjury.

II

Petitioner's argument, that, even if the evidence was admissible under the Fourth Amendment, it was not competent impeaching evidence, is untenable. The Government did not initiate the inquiry into petitioner's past experience with narcotics. Petitioner himself opened up the subject and made his past conduct, evidencing respect for the narcotic laws, a material matter in support of his denial of guilt of the offenses charged. Rebuttal evidence contradicting his credibility as to an issue which he himself injected in the case was, therefore, clearly proper. *Scott* v. *United States,* 172 U. S. 343, 347-348; *Brady* v. *United States,* 148 F. 2d 394 (C. A. 9); *Dowling Brothers Distilling Co.* v. *United States,* 153 F. 2d 353 (C. A. 6), certiorari denied *sub nom. Gould* v. *United States,* 328 U. S. 848.

III

If there was error in the admission of testimony as to the finding of narcotics in 1950, the evidence was, in the circumstances of this case, harmless. The Government's evidence in its case in chief, summarized in the Statement, was overwhelming. The questioned testimony related to an entirely separate transaction which had occurred about a year before the acts for which

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petitioner was being tried, and the limited effect to be given to it was carefully explained to the jury. Moreover, even as to the purpose for which the testimony was admitted, there was other, clearly admissible evidence, that petitioner had told the agents shortly after the 1950 seizure that he was a dealer in narcotics. In view of the cumulative nature of the questioned testimony, its strict limitation by the trial judge, and the overwhelming evidence of guilt, the admission of the particular item of evidence here involved cannot be deemed prejudicial.

ARGUMENT

I

THE WEEKS RULE SHOULD NOT BE APPLIED SO AS TO PRECLUDE THE USE OF THE SUPPRESSED EVIDENCE FOR THE LIMITED PURPOSE OF NEUTRALIZING PETITIONER'S PERJURY ON HIS DIRECT EXAMINATION

The principal question in this case is the admissibility of the rebuttal testimony concerning the finding by the narcotics agents, in 1950, of 1.1 grains of heroin in petitioner's apartment. Petitioner's contention is that such testimony was incompetent for any purpose, because it was based on knowledge obtained by the agents as the result of the unlawful seizure of the heroin, the use of which as evidence had been previously suppressed.

The rebuttal testimony was competent, since it was not admitted as part of the substantive evi-

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dence in support of petitioner's guilt of the offenses charged, but solely for the limited purpose of impeaching petitioner's credibility so as to neutralize the effect of his own voluntary perjury on his direct examination. To hold otherwise would be to extend the scope of the rule which forbids the use in evidence of fruits of an illegal search and seizure beyond the practical considerations of the public policy underlying the rule.

The Fourth Amendment to the Constitution, the search and seizure provisions of which the rule is designed to implement, does not specifically prohibit the use in evidence of the fruits of an illegal search and seizure. *Wolf* v. *Colorado,* 338 U. S. 25. At common law, the courts did not stop, in the course of a trial, to inquire as to the collateral matter of the source of otherwise competent evidence. See *Adams* v. *New York,* 192 U. S. 585; *People* v. *Defore,* 242 N. Y. 13, 150 N. E. 585 (1926). But, as the result of the doctrine of exclusion adopted in *Weeks* v. *United States,* 232 U. S. 383, procedures have been evolved for the suppression of illegally obtained evidence. See Rule 41 (e), F. R. Crim. P.; *Agnello* v. *United States,* 269 U. S. 20; *Gouled* v. *United States,* 255 U. S. 298; *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385.

The application of the *Weeks* rule is, however, to be considered in terms of its policy. Its

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primary function is to reinforce the constitutional guaranty of the Fourth Amendment. It deters unlawful acts of search and seizure by federal enforcement officers by rendering the fruits of their unlawful actions valueless as a means of conviction. Thus, "it is an extraordinary sanction" (*United States* v. *Wallace Co.*, 336 U. S. 793, 796), for it inevitably furnishes to a criminal immunity from punishment. As such, it conflicts with the compelling social interest in curbing crime. "On the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office." *People* v. *Defore*, 242 N. Y. 13, 24–25, 150 N. E. 585, 589 (1926). The rule, therefore, is the result of the careful balancing of the conflicting social interests involved. *Nueslein* v. *District of Columbia*, 115 F. 2d 690, 696 (C. A. D. C.). For this reason the rule cannot be absolute. The remedy provided thereby is not an essential ingredient of the right of privacy. *Wolf* v. *Colorado*, *supra*, at 29. It can be valid only as long as it serves the predominating interest. Once there is a shift in the interest to be protected, the rule should be limited in favor of the more momentous interest.

Undoubtedly, every rule of privilege inevitably condones to some degree a suppression of truth, and prevents the trier of facts, whether judge or jury, from hearing pertinent testimony. Thus, the constitutional privilege against self-incrimina-

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tion, the *McNabb* rule of evidence against the admission of even uncoerced confessions, as well as the one here under consideration, all authorize the suppression of truth. They are all based upon the proposition that the courts will not, even in the interest of truth, sanction the use of evidence obtained in violation of a basic right. It is one thing, however, to prohibit the Government's affirmative use of illegally seized evidence, and it is another thing to permit the same rule to be used by a defendant as a license to impose a falsehood upon the court. The former practice serves a public interest, but whatever benefit may be thought to derive from permitting the latter is outweighed by the evil which it encourages. This is so since permitting the use of the information for rebuttal purposes, as in the instant case, will not tend to promote violations of the Fourth Amendment. Evidence is seized in the main, not in contemplation of its possible use for impeachment purposes, but rather for use as affirmative proof of crime. Thus, to extend the rule to cover the situation in this case will not help to fulfill its purpose as a safeguard of the constitutional right of privacy to such an extent as to justify the ensuing injury to the integrity of the courts. There is clear danger in extending a rule to a point where it imports a policy which transcends the reasons for the rule.

Petitioner's argument would have the effect of requiring the trial judge to permit to go to the jury unimpeached petitioner's testimony that he

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never possessed or dealt with narcotics, testimony which the trial judge actually and judicially knew to be an unmitigated lie.[5] A rule which was designed to deter law enforcement officers from violating rights under the Fourth Amendment should not be permitted to be used as a cover for perjury. As stated in *Carroll* v. *United States,* 267 U. S. 132, 149, and approved in *Olmstead* v. *United States,* 277 U. S. 438, 465, "The Fourth Amendment is to be construed * * * in a manner which will conserve public interests as well as the interests and rights of individual citizens." Although the rule gives an advantage or privilege to a defendant, such advantage or privilege must be subject to such conditions as will prevent it from redounding to an unfair and unreasonable advantage or privilege. The rule protected petitioner, as a defendant, from conviction for the 1950 possession of narcotics, but it should not also grant him, as a witness, a privilege to testify falsely on his trial for the 1951 sales of other narcotics.

Even a direct constitutional right, the privilege against self-incrimination, is not absolute. It is well established that "where criminating facts have been voluntarily revealed, the privilege cannot be invoked to avoid disclosure of the details." *Rogers* v. *United States,* 340 U. S.

[5] In the 1950 suppression proceeding, petitioner categorically asserted ownership of the suppressed narcotics (Appendix to Pet. Br., p. 22).

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367, 373, and cases cited. And while, as this Court pointed out in that decision (fn. 15, p. 373), the federal courts have not been called upon to deal with "the problems arising out of a possible abuse of the privilege against self-incrimination in adversary proceedings", the rule of most of the state courts is that any testimony by a witness as to a particular transaction waives the privilege completely as to all other inquiries pertinent to that transaction on the theory that injustice would result if a witness were permitted to stop after telling part of the story, for the evidence voluntarily given might be completely misleading. See decisions collected in 147 A. L. R. 255, 8 Wigmore, *Evidence* (3rd ed. 1940), Section 2276. It was on a similar rationale that the courts below held the suppressed evidence here in question admissible for impeachment purposes. We submit that just as the necessity of getting the complete story before a jury justifies a reasonable interpretation of the constitutional privilege against self-incrimination, so the same necessity justifies the limitation upon the *Weeks* rule which the courts below allowed in this case.

Petitioner, upon electing to become a witness in his own behalf, assumed the dual role of the accused-witness. In the capacity of a witness he became subject to all rules of evidence applicable to witnesses generally. He became subject to all the incidental tests of testimony ordinarily ap-

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plied to witnesses. He became subject to impeachment the same as any other witness. Thus, when petitioner voluntarily testified on direct examination that he never possessed or dealt with narcotics, it was not only proper, but incumbent on the court, in the interest of having the truth before the jury, to permit the testimony relating to petitioner's 1950 possession of narcotics. Adherence to the rule of suppression in the circumstances of this case would in effect amount to knowing acquiescence in perjury by petitioner as a witness. Thus far, we submit, the *Weeks* rule does not extend.

In support of his contention that the exclusionary rule precluded the use of the impeachment testimony in the instant case, petitioner relies principally (Pet. Br., pp. 7–8) upon this Court's decision in *Agnello* v. *United States,* 269 U. S. 20, of which the court below made no mention. In that case the Government, in its case in chief, showed that narcotics agents, who knew that two informants had previously arranged with defendant Alba to purchase narcotics, while watching through a window of Alba's house, saw Agnello hand a number of small packages to one of the informants, who passed some money to Alba. The agents then rushed into the house, arrested the defendants, and found packages of cocaine on the table and in Agnello's pockets. 269 U. S. at 28–29. The Government also offered testimony, as part of its case in chief, that immediately after

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the arrest other agents searched Agnello's house, where in his bedroom they found a can of cocaine which was offered in evidence. That evidence, however, was excluded on the ground that the search and seizure without a warrant away from the place of arrest were illegal.

In defense, Agnello testified on direct examination that, although he had received the packages from one Centorino, a codefendant, he did not know their contents.* Thereafter, "On cross examination, he said that he had never seen narcotics. Then, notwithstanding objection by defendants, the prosecuting attorney produced the can of cocaine which the Government claimed was seized in Agnello's bedroom and asked him whether he had ever seen it. He said he had not, and specifically stated he had never seen it in his house. In rebuttal, over objections of defendants, the Government was permitted to put

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*The record in the *Agnello* case (Oct. Term, 1925, No. 6) shows that in this connection, Agnello also testified as follows:

"Q. Did you know Centorino before that time?

"A. I did.

"Q. Had you ever spoken to him at any time in your life about cocaine? About selling cocaine?

"A. No, sir.

"Q. Did you ever have any conversation with Alba about selling cocaine?

"A. No, sir. (p. 471.)

* * * * *

"Q. Up to that time had you heard any discussion about the sale of narcotics?

"A. No, sir. (p. 473.)"

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in the evidence of the search and seizure of the can of cocaine in Frank Agnello's room, which theretofore had been offered and excluded." (269 U. S. at pp. 29–30.)

In respect of this evidence, this Court held (269 U. S. at 35):

> * * * And the contention that the evidence of the search and seizure was admissible in rebuttal is without merit. In his direct examination, Agnello was not asked and did not testify concerning the can of cocaine. *In cross-examination,* in answer to a question permitted over his objection, he said he had never seen it. *He did nothing to waive his constitutional protection or to justify cross-examination in respect of the evidence claimed to have been obtained by the search.* As said in *Silverthorne Lumber Co.* v. *United States, supra,* 392, "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all." The admission of evidence obtained by the search and seizure was error and prejudicial to the substantial rights of Frank Agnello. The judgment against him must be set aside and a new trial awarded. [Italics added.]

Petitioner attempts to bring the instant case within this ruling in the *Agnello* case by arguing that Agnello's testimony on his direct examination

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that he had had no conversations concerning narcotics (see fn. 6, p. 29, *supra*) was the equivalent of petitioner's denial on his direct examination that he had never possessed, sold, or otherwise dealt in narcotics in so far as it opened the door to the rebuttal evidence in question. It is to be noted, however, that the existence of the suppressed evidence in Agnello's case was not in direct contradiction of his direct testimony that he had had no conversations about narcotics. Thus, the suppressed evidence did not directly and conclusively give the lie to Agnello's testimony on direct examination, as is the case here. It was not until Agnello denied on *cross-examination* that he had ever seen narcotics (No. 6, O. T. 1925, R. 476) that a point of direct contradiction of the suppressed evidence was reached. Significantly, this Court pointed out in the portion of the opinion quoted above, that "In his direct examination, Agnello was not asked and did not testify concerning the can of cocaine." At the same time, by commenting on the fact that Agnello "did nothing to waive his constitutional protection or to justify cross-examination in respect of the evidence claimed to have been obtained by the search," the Court left the inference that in a case where there is voluntary testimony in direct contradiction of suppressed evidence, such evidence would be admissible in rebuttal. It implicitly recognized thereby that, had Agnello on *direct examination* given testimony which could have been

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construed as opening the door to examination concerning the suppressed narcotics, the admission of that evidence might have been justified. The Court seems to have thought that the cross-examination referred to in the opinion was a device by the prosecutor to get before the same jury evidence which had been excluded when first offered on the Government's case in chief.'

The circumstances in the instant case are entirely different. The Government did not attempt to get the evidence of petitioner's 1950 possession of narcotics before the jury as part of its case. It was petitioner who opened the question as to his possession of narcotics other than those involved at the trial. We submit that by his voluntary testimony in that respect he himself injected into the case the issue on which the suppressed evidence was admitted so as to permit testimony as to what the agents had found at the time of the illegal search in 1950, in order to show the falsity of his voluntary statement.

Moreover, in *Agnello,* and in *Mahoney* v. *United States,* 26 F. 2d 902 (C. A. 4), on which petitioner also relies, the suppressed evidence was so close-

[1] Similarly, in *Mahoney* v. *United States*, 26 F. 2d 902 (C. A. 4), on which petitioner also relies, the defendant on direct examination merely testified that she did not make the particular sale charged. This was not directly contradicted by the suppressed evidence of the seizure of liquor shortly after the sale. It was not until cross-examination that the defendant denied that this other liquor had been found in her home.

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ly related in point of time to the offense charged that there was a real danger that the suppressed evidence would be considered by the jury as proof of guilt, as of affirmative benefit to the Government. No such danger existed here, since the suppressed evidence related to a point in time remote from the offenses charged. In addition, there was here, as there was not in *Agnello,* an instruction specifically limiting the jury's consideration of the suppressed evidence to the issue of credibility.[8] Thus, there was in this case no danger that the suppressed evidence would be used as affirmative evidence in behalf of the Government beyond the limited scope for which we contend it was admissible, i. e., merely to neutralize the effect of petitioner's perjury.

Petitioner argues (Br. 12) that the changes in phraseology which occurred in the evolution of Rule 41 (e) of the Federal Rules of Criminal Procedure reflect an intention to preclude the admissibility of suppressed evidence under the circumstances here involved. He points to the fact that the preliminary drafts provided that suppressed property "shall not be admissible in evidence at any hearing or trial of the proceeding in connection with which the seizure occurred,"

[8] In the *Agnello* case, both the Government and the defendants agreed that the can of cocaine there involved "was admitted in evidence, not to establish the fact that a crime had been committed, but to attack the credibility of the witness Frank Agnello" (No. 6, O. T. 1925, Gov. Br., p. 4; Pet. Br., p. 4), but no limiting instructions were sought or given.

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whereas the final draft provides that suppressed evidence "shall not be admissible in evidence at any hearing or trial." It is probable that the intent of the Advisory Committee in making this change was to prevent the Rule from limiting the *Weeks* doctrine to exclude such situations as were involved in *Silverthorne Lumber Co.* v. *United States,* 251 U. S. 385. In fact, the notes of the Advisory Committee indicate an intention merely to restate the existing law. On the other hand, the limitation which is here urged is not in conflict with the *Silverthorne* case and is not dependent upon the admission of the evidence being sought in a trial other than one in connection with which the seizure occurred. Therefore the change in the language relied on by petitioner has no relevance whatever to the present case. Obviously, the very special circumstances presented by the instant case were not within the contemplation of the Rule.

The fear that to interpret the exclusionary rule to permit the use of suppressed evidence in rebuttal would be so derogatory of the policy of the rule as to reduce the Fourth Amendment to a form of words, is unfounded. The use of the evidence in question in the particular circumstances of this case does not offend the policy of the exclusionary rule. There is no danger that such use, for the limited purpose of impeachment, would tend to destroy the rule in all instances where the defendant testifies in his own

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behalf, for the only situations in which such evidence could be used would be where, as here, a defendant tries to take advantage of the rule deliberately to testify falsely. Such evidence never could be used, either directly or indirectly, by the Government in support of its case in chief. It would be inadmissible for that purpose to show a pattern of offenses, as tending to prove intent or the like, for such proof would go to the Government's case in chief. Its use in any case where the defendant affirmatively protests his innocence of the charge for which he is on trial can be precluded merely by a recognition that a general denial of this character is not sufficient to open the door. It would not even be admissible as extrinsic evidence to refute any collateral testimony initially elicited on cross-examination, as in the *Agnello* and *Mahoney* cases, *supra,* since such testimony is ordinarily irrebuttable. All we contend is that, where a defendant seeks to take advantage of the rule affirmatively to lie to the court and the jury, the rule of exclusion should not be invoked to preclude the prosecution from nullifying the effect of such a lie.

This Court has recognized that the right of privacy guaranteed by the Fourth Amendment is not wholly protected in all instances by the rule of the *Weeks* case. There are two recognized limitations upon the *Weeks* rule: The limitation that only the victim of an unlawful search and seizure has standing to object to the use of the

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seized evidence (*Connolly* v. *Medalie,* 58 F. 2d 629, 630 (C. A. 2); cf. *Goldstein* v. *United States,* 316 U. S. 114, 121); and the limitation of the operation of the rule to acts of federal officers. *Lustig* v. *United States,* 338 U. S. 74, 78–79; *Byars* v. *United States,* 273 U. S. 28, 33. These two limitations upon the rule tend to detract from its intended deterrent effect more than the limitation imposed by the decision below could possibly do. As is pointed out above, permitting the use of the evidence in rebuttal will not encourage violations of the Fourth Amendment since in usual course evidence is sought out to be used as proof of crime, not for impeachment purposes. "General propositions do not decide concrete cases." Holmes, J., dissenting in *Lochner* v. *New York,* 198 U. S. 45, 76. And as stated in *Monagas* v. *Vidal,* 170 F. 2d 99, 106 (C. A. 1), certiorari denied, 335 U. S. 911, in connection with the doctrine of *res judicata* but very pertinent here, "like all rules of judicial administration, although certain basic principles have in the course of time become crystallized, it is to be applied in particular situations as justice and sound application of the policy behind the doctrine require, within, of course, the Constitutional limitations". By limiting the application of the rule of exclusion, petitioner will lose nothing to which he was lawfully entitled. He enjoys immunity from prosecution for the 1950 offense. All that is denied him now is a license to perjure himself in the instant case. Justice cannot suffer by a limitation of the rule under the particular circum-

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stances of this case; rather it will be defeated by a too rigid application.

II

THE EVIDENCE, IF ADMISSIBLE UNDER THE *WEEKS* RULE, WAS OTHERWISE COMPETENT FOR THE PURPOSE FOR WHICH IT WAS OFFERED

Petitioner's argument that, even if the evidence was not inadmissible under the *Weeks* rule, it was not competent and relevant for the purpose for which it was offered, is untenable.

The evidence in question was not offered as proof of the crimes charged against petitioner; it was not offered to show purpose, intent, or a similar previous course of conduct; it was not even offered to contradict petitioner as to a collateral matter raised for the first time in cross-examination. It was offered and admitted in rebuttal for the limited purpose, made clear by the trial judge, of impeaching the credibility of petitioner as to a matter which he had himself first introduced in evidence on his direct examination and thereby made material. As such it was clearly competent evidence for the limited purpose for which the jury was allowed to consider it—the issue of credibility. *Scott* v. *United States,* 172 U. S. 343, 347–348; *United States* v. *Bowcott,* 170 F. 2d 173 (C. A. 7), certiorari denied, 335 U. S. 911; *Nye & Nissen* v. *United States,* 168 F. 2d 846, 856 (C. A. 9), affirmed, 336 U. S. 613; *United States* v. *Bradley,* 152 F. 2d 425 (C. A. 3); *Vamvas* v. *United States,* 13 F. 2d 347 (C. A. 5);

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Strom v. *United States*, 12 F. 2d 233, 234 (C. A. 6), certiorari denied, 271 U. S. 683; *Black* v. *United States*, 294 Fed. 828, 831 (C. A. 5), certiorari denied, 264 U. S. 580; *Tam Shi Yan* v. *United States*, 224 Fed. 422 (C. A. 2).[9]

The Government did not initiate the inquiry into petitioner's past experience with narcotics. Had it done so it might have been bound by his answers and precluded from refuting them by other evidence under the rule against impeachment by extrinsic evidence relied upon by petitioner.[10] Petitioner himself opened up the subject by testifying on direct examination that he never possessed or dealt in narcotics. He made his past conduct, evidencing abiding respect at least for the narcotic laws, a material matter in support of his denial of guilt of the offenses charged. *Scott* v. *United States, supra; Claunch* v. *United States*, 155 F. 2d 261 (C. A. 5); *Strom* v. *United States*, 12 F. 2d 233, 234 (C. A. 6), certiorari denied, 271 U. S. 683. When he thus testified falsely on direct examination as to a

[9] Petitioner's invocation of the Sixth Amendment as a basis for barring the evidence (Br. 15) is completely baseless. It would apply with equal force to the admission of evidence of prior illegal activity in order to show a course of conduct, intent, or any of the other bases on which such evidence has always been found admissible.

[10] *United States* v. *Klass*, 166 F. 2d 373, 376 (C. A. 3), upon which petitioner relies (Pet. Br., p. 14), is clearly distinguishable from the instant case; the testimony rebutted was not adduced on direct testimony, but merely elicited on cross-examination.

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matter bearing on his credibility, impeachment thereof was no longer limited to his answers on cross-examination, and countervailing evidence was relevant and competent under the cases cited above.

A very similar situation was involved in *Brady* v. *United States,* 148 F. 2d 394 (C. A. 9), in which a defendant, accused of violations of the narcotics laws, testified on direct examination that he was not a narcotic addict, and that he had never seen, purchased or used narcotics. In rebuttal the Government introduced evidence, oral and documentary, to the effect that, while awaiting trial, the defendant and his wife, under assumed names, had undergone treatment as narcotic addicts. In holding the evidence admissible, the court said at p. 395:

> Had this showing been offered merely to degrade the accused it would no doubt have been improper to admit it, but appellant himself opened the matter up. Thus evidence of addiction became relevant and proper as rebuttal.

See also *Dowling Brothers Distilling Co.* v. *United States,* 153 F. 2d 353 (C. A. 6), certiorari denied *sub nom. Gould* v. *United States,* 328 U. S. 848, where a defendant, charged with selling at overceiling prices, had testified that he never made any sales over the ceiling, and in rebuttal witnesses were allowed to testify as to overpayments to defendant in connection with sales not charged

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in the indictment. In upholding the admissibility of such testimony the court said, at p. 361:

> It was proper rebuttal going to the credibility of Gould, whatever infirmity, if any, might have attached to it in other circumstances.

The relevance of such evidence for impeachment purposes is not dependent, as petitioner seems to think, upon its "probative value to prove the charge on trial." On the contrary, although some evidence admissible for a relevant limited purpose may have a tendency to establish a fact for which it is inadmissible, the incidental effect is undesired. Cf. 3 Wigmore, *Evidence,* § 889. But, under the well established multiple admissibility rule, "when", as Professor Wigmore states it, "an evidentiary fact is offered for one purpose, and becomes admissible by satisfying all the rules applicable to it in that capacity, it is not inadmissible because it does not satisfy the rules applicable to it in some other capacity and because the jury might improperly consider it in the latter capacity." 1 Wigmore, *supra,* § 13. The control of any possible abuse must depend upon the instructions the trial court gives the jury. 1 Wigmore, *supra.* In the instant case, the trial court, as the court below found, "was meticulous in protecting his [petitioner's] rights by instructions limiting the consideration of the evidence to the one point for which it was admitted" (R. 188).

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III

IF THE REBUTTAL TESTIMONY WAS INADMISSIBLE, THE ERROR IN ADMITTING IT WAS, IN THE CIRCUMSTANCES OF THIS CASE, HARMLESS

There is no question that the Government's evidence in the case in chief, independently of the rebuttal testimony, overwhelmingly established the sales of the narcotics. The testimony of the purchasers concerning their transactions with petitioner was closely corroborated by the narcotics agents, who on each occasion carefully supervised and observed the actions of the purchaser immediately prior to and following the transaction.

Thus, the mass of evidence pointing to petitioner's guilt makes the challenged rebuttal testimony of little significance against the background of the record as a whole. This is particularly true, since such testimony related to an entirely separate transaction which had occurred more than a year before the acts for which petitioner was being tried, and since the limited purpose of the testimony was specifically explained to the jury. Moreover, the questioned rebuttal testimony concerning the 1.1 grains of heroin was reduced in importance by the other rebuttal testimony, to which petitioner made no objection at the trial and the competency of which he does not now deny, concerning his admissions, on February 24, 1950, of his wholesale purchases of one and two-ounce quantities of narcotics from

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Chicago dealers. Such admissions were voluntarily made and were therefore competent evidence for the purpose used. Since this other rebuttal testimony impeached petitioner's credibility, the error, if any, in the admission of the questioned testimony, specifically for the purpose of attempting to accomplish the same result, was harmless.

In view of the cumulative nature of the questioned testimony, its strict limitation by the trial judge, and the overwhelming evidence of guilt, summarized in the Statement, *supra*, we submit that the admission of such testimony would not warrant a reversal of the conviction. Cf. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 235.

CONCLUSION

It is respectfully submitted that the judgment below should be affirmed.

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SUPREME COURT OF THE UNITED STATES

No. 121.—October Term, 1953.

Sam Walder, Petitioner, v. United States of America. } On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[February 1, 1954.]

Mr. Justice Frankfurter delivered the opinion of the Court.

In May 1950, petitioner was indicted in the United States District Court for the Western District of Missouri for purchasing and possessing one grain of heroin. Claiming that the heroin capsule had been obtained through an unlawful search and seizure, petitioner moved to suppress it. The motion was granted, and shortly thereafter, on the Government's motion, the case against petitioner was dismissed.

In January of 1952, petitioner was again indicted, this time for four other ~~sales of narcotics, in violation of 26 U. S. C. § 2554 (a).~~ The Government's case consisted principally of the testimony of two drug addicts who claimed to have procured the illicit stuff from petitioner under the direction of federal agents. The only witness for the defense was the defendant himself, petitioner here. He denied any narcotics dealings with the two Government informers and attributed the testimony against him to personal hostility.

Early on his direct examination petitioner testified as follows:

> "Q: Now, first, Mr. Walder, before we go further in your testimony, I want to you [*sic*] tell the Court and jury whether, not referring to these informers in this case, but whether you have ever sold any narcotics to anyone.

"A: I have never sold any narcotics to anyone in my life.

"Q: Have you ever had any narcotics in your possession, other than what may have been given to you by a physician for an ailment?

"A: No.

"Q: Now, I will ask you one more thing. Have you ever handed or given any narcotics to anyone as a gift or in any other manner without the receipt of any money or any other compensation?

"A: I have not.

"Q: Have you ever even acted as, say, have you acted as a conduit for the purpose of handling what you knew to be a narcotic from one person to another?

"A: No, Sir."

On cross-examination, in response to a question by Government counsel making reference to this direct testimony, petitioner reiterated his assertion that he had never purchased, sold or possessed any narcotics. Over the defendant's objection, the Government then questioned him about the heroin capsule unlawfully seized from his home in his presence back in February 1950. The defendant stoutly denied that any narcotics were taken from him at that time.[1] The Government then put on the stand one of the officers who had participated in the unlawful search and seizure, and also the chemist who had analyzed the heroin capsule there seized. The trial judge admitted this evidence, but carefully charged the jury that it was not to be used to determine whether the defendant had committed the crimes here charged, but solely for the purpose of impeaching the defendant's credibility. The defend-

[1] This denial squarely contradicted the affidavit filed by the defendant in the earlier proceeding, in connection with his motion under Rule 41 (e) to suppress the evidence unlawfully seized.

ant was convicted on all counts, and the Court of Appeals for the Eighth Circuit affirmed, one judge dissenting. 201 F. 2d 715. The question which divided that court, and the sole issue here, is whether the defendant's assertion on direct examination that he had never possessed any narcotics opened the door, solely for the purpose of attacking the defendant's credibility, to evidence of the heroin unlawfully seized in connection with the earlier proceeding. Because this question presents a novel aspect of the scope of the doctrine of *Weeks* v. *United States*, 232 U. S. 383, we granted certiorari. 345 U. S. 992.

The Government cannot violate the Fourth Amendment [2]—in the only way in which the Government can do anything, namely through its agents—and use the fruits of such unlawful conduct to secure a conviction. *Weeks* v. *United States, supra.* Nor can the Government make indirect use of such evidence in order to secure a conviction. *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385, or support a conviction on evidence obtained through leads from the unlawfully obtained evidence, cf. *Nardone* v. *United States*, 308 U. S. 338. All these methods are outlawed, and convictions obtained by means of them are invalidated, because they encourage the kind of society that is obnoxious to free men.

It is one thing to say that the Government cannot make an affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can turn the existence of such evidence to his own advantage by using it as a shield against contradiction of untruth. Such an extension of the *Weeks* doctrine would be a perversion of the Fourth Amendment.

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[2] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."

Take the present situation. Of his own accord, the defendant went beyond a mere denial of complicity in the crimes of which he was charged and made the sweeping claim that he had never dealt in or possessed any narcotics. Of course, the Constitution guarantees a defendant the fullest opportunity to meet the accusation against him. He must be free to deny all the elements of the case against him without thereby giving leave to the Government to introduce by way of rebuttal evidence illegally secured by it, and therefore not available for its case in chief. Beyond that, however, there is hardly justification for letting the defendant affirmatively resort to perjurious testimony in reliance on the Government's disability to challenge his credibility.[3]

The situation here involved is to be sharply contrasted with that presented by *Agnello* v. *United States*, 269 U. S. 20. There the Government, after having failed in its efforts to introduce the tainted evidence in its case in chief, tried to smuggle it in on cross-examination by asking the accused the broad question "Did you ever see narcotics before?" [4] After eliciting the expected denial, it sought to introduce evidence of narcotics located in the defendant's home by means of an unlawful search and seizure, in order to discredit the defendant. In holding that the Government could no more work in this evi-

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[3] Cf. *Michelson* v. *United States*, 335 U. S. 469, 479: "The price a defendant must pay for attempting to prove his good name is to throw open the entire subject which the law has kept closed for his benefit and to make himself vulnerable where the law otherwise shields him."

The underlying rationale of the *Michelson* case also disposes of the evidentiary question raised by petitioner, to wit, "whether defendant's actual guilt under a former indictment which was dismissed may be proved by extrinsic evidence introduced to impeach him in a prosecution for a subsequent offense."

[4] Transcript of Record, p. 476, *Agnello* v. *United States*, 269 U. S. 20.

dence on cross-examination than it could in its case in chief, the Court foreshadowed, perhaps unwittingly, the result we reach today:

> "And the contention that the evidence of the search and seizure was admissible in rebuttal is without merit. In his direct examination, Agnello was not asked and did not testify concerning the can of cocaine. In cross-examination, in answer to a question permitted over his objection, he said he had never seen it. He did nothing to waive his constitutional protection or to justify cross-examination in respect of the evidence claimed to have been obtained by the search. . . ." 269 U. S., at 35.

The judgment is

Affirmed.

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS dissent.